

ies, prior to repeal by Pub. L. 104-208, div. A, title I, §101(e) [title VII, §708(b)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-312.

Another prior section 1041, Pub. L. 89-329, title II, §231, as added Pub. L. 94-482, title I, §107, Oct. 12, 1976, 90 Stat. 2090, set out the Congressional statement of findings and purpose for the research library resources strengthening program, prior to the general amendment of this subchapter by Pub. L. 96-374.

Another prior section 1041, Pub. L. 89-329, title II, §231, Nov. 8, 1965, 79 Stat. 1228; Pub. L. 90-575, title II, §§217, 218, Oct. 16, 1968, 82 Stat. 1037; Pub. L. 92-318, title I, §114(a), June 23, 1972, 86 Stat. 240, authorized appropriations for assistance to Library of Congress for acquisition of Library material, prior to the general amendment of former part C of this subchapter by Pub. L. 94-482, title I, §107, Oct. 12, 1976, 90 Stat. 2090.

A prior section 1042, Pub. L. 89-329, title II, §222, as added Pub. L. 107-110, title X, §1051(3), Jan. 8, 2002, 115 Stat. 2081, related to eligibility to receive a grant or enter into a contract or cooperative agreement under sections 1041 to 1044 of this title, prior to repeal by Pub. L. 110-315, title II, §201(3), Aug. 14, 2008, 122 Stat. 3154.

Another prior section 1042, Pub. L. 89-329, title II, §232, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1386; amended Pub. L. 102-325, title II, §201, July 23, 1992, 106 Stat. 471, required Secretary to endeavor to achieve broad and equitable geographical distribution of grants, prior to repeal by Pub. L. 104-208, div. A, title I, §101(e) [title VII, §708(b)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-312.

Another prior section 1042, Pub. L. 89-329, title II, §232, as added Pub. L. 94-482, title I, §107, Oct. 12, 1976, 90 Stat. 2090; amended Pub. L. 96-49, §3(b), Aug. 13, 1979, 93 Stat. 351, which authorized appropriations through fiscal year 1980, was omitted in the general amendment of this subchapter by Pub. L. 96-374.

Another prior section 1042, Pub. L. 89-329, title II, §232, as added Pub. L. 92-318, title I, §115(a), June 23, 1972, 86 Stat. 241, which required an evaluation and report to Congressional committees by the Librarian of the Congress, was omitted in the general amendment of former part C of this subchapter by Pub. L. 94-482, title I, §107, Oct. 12, 1976, 90 Stat. 2090.

A prior section 1043, Pub. L. 89-329, title II, §223, as added Pub. L. 107-110, title X, §1051(3), Jan. 8, 2002, 115 Stat. 2082, related to use of funds, prior to repeal by Pub. L. 110-315, title II, §201(3), Aug. 14, 2008, 122 Stat. 3154.

Another prior section 1043, Pub. L. 89-329, title II, §233, as added Pub. L. 94-482, title I, §107, Oct. 12, 1976, 90 Stat. 2090, related to eligibility for assistance under research library resources strengthening program, prior to the general amendment of this subchapter by Pub. L. 96-374.

A prior section 1044, Pub. L. 89-329, title II, §224, as added Pub. L. 107-110, title X, §1051(3), Jan. 8, 2002, 115 Stat. 2083, related to authorization of appropriations, prior to repeal by Pub. L. 110-315, title II, §201(3), Aug. 14, 2008, 122 Stat. 3154.

Another prior section 1044, Pub. L. 89-329, title II, §234, as added Pub. L. 94-482, title I, §107, Oct. 12, 1976, 90 Stat. 2090, related to regional balance in allocation of funds, prior to the general amendment of this subchapter by Pub. L. 96-374.

Prior sections 1045 and 1046 were omitted in the general amendment of this subchapter by Pub. L. 96-374.

Section 1045, Pub. L. 89-329, title II, §235, as added Pub. L. 94-482, title I, §107, Oct. 12, 1976, 90 Stat. 2091, set out limitations on grants as regards sectarian or religious use.

Section 1046, Pub. L. 89-329, title II, §236, as added Pub. L. 94-482, title I, §107, Oct. 12, 1976, 90 Stat. 2091, required consultations by grantees with State agencies.

A prior section 1047, Pub. L. 89-329, title II, §241, as added Pub. L. 99-498, title II, §207, Oct. 17, 1986, 100 Stat. 1289; amended Pub. L. 102-325, title II, §201, July 23, 1992, 106 Stat. 471; Pub. L. 103-208, §2(a)(3), Dec. 20, 1993, 107 Stat. 2457, authorized Secretary to make grants to and enter into contracts with eligible institutions, li-

brary organizations or agencies to assist in strengthening library and information science programs and libraries in historically black colleges and universities and other minority-serving institutions, prior to repeal by Pub. L. 104-208, div. A, title I, §101(e) [title VII, §708(b)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-312.

Another prior section 1047 and prior sections 1047a to 1047j were omitted in the general amendment of former part D of this subchapter by Pub. L. 99-498.

Section 1047, Pub. L. 89-329, title II, §241, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1386, stated congressional declaration of purpose.

Section 1047a, Pub. L. 89-329, title II, §242, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1387, established National Periodical System Corporation.

Section 1047b, Pub. L. 89-329, title II, §243, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1387, related to functions of National Periodical System Corporation.

Section 1047c, Pub. L. 89-329, title II, §244, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1387, related to board of directors of National Periodical System Corporation.

Section 1047d, Pub. L. 89-329, title II, §245, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1387, related to director and staff of National Periodical System Corporation.

Section 1047e, Pub. L. 89-329, title II, §246, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1388, related to nonprofit nature of National Periodical System Corporation.

Section 1047f, Pub. L. 89-329, title II, §247, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1388, related to authority of National Periodical System Corporation.

Section 1047g, Pub. L. 89-329, title II, §248, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1389, related to congressional approval of design for national periodical system.

Section 1047h, Pub. L. 89-329, title II, §249, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1389, related to effect of former part D of this subchapter on copyright law.

Section 1047i, Pub. L. 89-329, title II, §250, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1389, defined terms used in former part D of this subchapter.

Section 1047j, Pub. L. 89-329, title II, §251, as added Pub. L. 96-374, title II, §201, Oct. 3, 1980, 94 Stat. 1390, authorized appropriations to carry out former part D of this subchapter.

### SUBCHAPTER III—INSTITUTIONAL AID

#### CODIFICATION

Title III of the Higher Education Act of 1965, comprising this subchapter, was originally enacted by Pub. L. 89-329, title III, Nov. 8, 1965, 79 Stat. 1229, and amended by Pub. L. 89-752, Nov. 3, 1966, 80 Stat. 1240; Pub. L. 90-575, Oct. 16, 1968, 82 Stat. 1014; Pub. L. 91-230, Apr. 13, 1970, 84 Stat. 121; Pub. L. 92-318, June 23, 1972, 86 Stat. 235; Pub. L. 93-380, Aug. 21, 1974, 88 Stat. 484; Pub. L. 94-482, Oct. 12, 1976, 90 Stat. 2081; Pub. L. 96-49, Aug. 13, 1979, 93 Stat. 351; Pub. L. 96-374, Oct. 3, 1980, 94 Stat. 1367; Pub. L. 97-35, Aug. 13, 1981, 95 Stat. 357; Pub. L. 98-95, Sept. 26, 1983, 97 Stat. 708; Pub. L. 98-312, June 12, 1984, 98 Stat. 233. Such title is shown herein, however, as having been added by Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1290, without reference to such intervening amendments because of the extensive revision of title III by Pub. L. 99-498.

### § 1051. Findings and purpose

#### (a) Findings

The Congress finds that—

(1) there are a significant number of institutions of higher education serving high percentages of minority students and students from low-income backgrounds, that face problems that threaten their ability to survive;

(2) the problems relate to the management and fiscal operations of certain institutions of higher education, as well as to an inability to engage in long-range planning and development activities, including endowment building;

(3) in order to be competitive and provide a high-quality education for all, institutions of higher education should improve their technological capacity and make effective use of technology;

(4) the subchapter III program prior to 1985 did not always meet the specific development needs of historically Black colleges and universities and other institutions with large concentrations of minority, low-income students;

(5) the solution of the problems of these institutions would enable them to become viable, fiscally stable and independent, thriving institutions of higher education;

(6) providing assistance to eligible institutions will enhance the role of such institutions in providing access and quality education to low-income and minority students;

(7) these institutions play an important role in the American system of higher education, and there is a strong national interest in assisting them in solving their problems and in stabilizing their management and fiscal operations, and in becoming financially independent; and

(8) there is a particular national interest in aiding those institutions of higher education that have historically served students who have been denied access to postsecondary education because of race or national origin and whose participation in the American system of higher education is in the Nation's interest so that equality of access and quality of postsecondary education opportunities may be enhanced for all students.

#### (b) Purpose

It is the purpose of this subchapter to assist such institutions in equalizing educational opportunity through a program of Federal assistance.

(Pub. L. 89-329, title III, § 301, as added Pub. L. 99-498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1290; amended Pub. L. 102-325, title III, § 301, July 23, 1992, 106 Stat. 472; Pub. L. 103-208, § 2(a)(4), Dec. 20, 1993, 107 Stat. 2457; Pub. L. 105-244, title III, § 302, Oct. 7, 1998, 112 Stat. 1637.)

#### PRIOR PROVISIONS

A prior section 1051, Pub. L. 89-329, title III, § 301, as added Pub. L. 96-374, title III, § 301, Oct. 3, 1980, 94 Stat. 1390, stated Congressional findings and purposes for program of providing Federal assistance to institutions of higher education, prior to the general revision of this subchapter by Pub. L. 99-498.

Another prior section 1051, Pub. L. 89-329, title III, § 301, Nov. 8, 1965, 79 Stat. 1229; Pub. L. 89-752, § 10, Nov. 3, 1966, 80 Stat. 1243; Pub. L. 90-575, title II, §§ 221, 222, Oct. 16, 1968, 82 Stat. 1038; Pub. L. 92-318, title I, § 121(a), June 23, 1972, 86 Stat. 241; Pub. L. 94-482, title I, § 111, Oct. 12, 1976, 90 Stat. 2091; Pub. L. 96-49, § 4, Aug. 13, 1979, 93 Stat. 351, related to a program of special assistance to strengthen the academic quality of developing institutions, prior to the general revision of this subchapter by Pub. L. 96-374.

Prior sections 1052 to 1056 were omitted in the general revision of this subchapter by Pub. L. 96-374.

Section 1052, Pub. L. 89-329, title III, § 302, Nov. 8, 1965, 79 Stat. 1229; Pub. L. 92-318, title I, § 121(a), June 23, 1972, 86 Stat. 241; Pub. L. 93-380, title VIII, § 832, Aug. 21, 1974, 88 Stat. 603; Pub. L. 94-482, title I, § 112, Oct. 12, 1976, 90 Stat. 2091, related to eligibility for special assistance.

Section 1053, Pub. L. 89-329, title III, § 303, Nov. 8, 1965, 79 Stat. 1230; Pub. L. 91-230, title IV, § 401(h)(4), Apr. 13, 1970, 84 Stat. 174; Pub. L. 92-318, title I, § 121(a), title III, § 301(a)(1), June 23, 1972, 86 Stat. 242, 326, provided for the establishment of an Advisory Council on Developing Institutions.

Section 1054, Pub. L. 89-329, title III, § 304, Nov. 8, 1965, 79 Stat. 1230; Pub. L. 92-318, title I, § 121(a), June 23, 1972, 86 Stat. 243, authorized the Commissioner of Education to make grants and awards.

Section 1055, Pub. L. 89-329, title III, § 305, Nov. 8, 1965, 79 Stat. 1231; Pub. L. 92-318, title I, § 121(a), June 23, 1972, 86 Stat. 244, related to assistance to developing institutions under other programs.

Section 1056, Pub. L. 89-329, title III, § 306, as added Pub. L. 90-575, title II, § 223(a), Oct. 16, 1968, 82 Stat. 1038; amended Pub. L. 92-318, title I, § 121(a), June 23, 1972, 86 Stat. 245, prohibited the use of funds for religious activities.

#### AMENDMENTS

1998—Pars. (3) to (8). Pub. L. 105-244 added par. (3) and redesignated former pars. (3) to (7) as (4) to (8), respectively.

1993—Subsec. (a)(2). Pub. L. 103-208 struck out the comma after “planning”.

1992—Subsec. (a)(1). Pub. L. 102-325, § 301(1), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “many institutions of higher education in this era of declining enrollments and scarce resources face problems which threaten their ability to survive;”.

Subsec. (a)(2). Pub. L. 102-325, § 301(2), struck out “recruitment activities,” after “long-range planning;”.

Subsec. (a)(5). Pub. L. 102-325, § 301(3), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “providing a minimum level of assistance to all categories of eligible institutions will assure the continued participation of the institutions in the program established in this subchapter and enhance their role in providing access and quality education to low-income and minority students;”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Section 5 of Pub. L. 103-208 provided that:

“(a) IN GENERAL.—Except as otherwise provided therein or in subsection (b) of this section, the amendments made by section 2 of this Act [see Tables for classification] shall be effective as if such amendments were included in the Higher Education Amendments of 1992 (Public Law 102-325), except that section 492 of the Act [section 1098a of this title] shall not apply to the amendments made by this Act [see Tables for classification].

“(b) EXCEPTIONS.—

“(1) EFFECTIVE ON OCTOBER 1, 1993.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after October 1, 1993: (b)(29), (j)(28), (j)(36), and (j)(40) [amending sections 1070d-34, 1134e, 1134j, and 1134q of this title].

“(2) EFFECTIVE ON DATE OF ENACTMENT.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after the date of enactment of this Act [Dec. 20, 1993]: (b)(2), (b)(7), (b)(28), (c)(3), (c)(5), (c)(13)(B), (c)(13)(C), (c)(18), (c)(30), (c)(62) [amending sections 1070a, 1070a-11, 1070d-33, 1075, 1077a, 1078, 1078-1, and 1085 of this title].

“(3) EFFECTIVE 30 DAYS AFTER ENACTMENT.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after 30 days after the date of enactment of this Act [Dec. 20, 1993]: (c)(19), (c)(20), (c)(21), (c)(59) [amending sections 1078 and 1085 of this title].

“(4) EFFECTIVE 60 DAYS AFTER ENACTMENT.—The amendments made by the following subsections of section 2 of this Act shall be effective on and after 60 days after the date of enactment of this Act [Dec. 20, 1993]: (c)(31) and (c)(53) [amending sections 1078-1 and 1083 of this title].

“(5) EFFECTIVE ON APRIL 1, 1994.—The amendments made by section 2(c)(43)(B) of this Act [amending section 1078-8 of this title] shall be effective on and after April 1, 1994.

“(6) EFFECTIVE ON JULY 1, 1994.—The amendments made by the following subsection[s] of section 2 of this Act shall be effective on and after July 1, 1994: (b)(25), (c)(2), (c)(13)(A), (c)(29) [amending sections 1070b-2, 1075, 1078, and 1078-1 of this title].

“(7) COHORT DEFAULT DATA EXAMINATIONS.—The amendment made by section 2(c)(60)(A) [amending section 1085 of this title] shall be effective on and after October 1, 1994.

“(8) COHORT DEFAULT RATE DETERMINATIONS.—The amendments made to subsection[s] (a)(3) and (m)(1)(B) of section 435 of this [the] Act [section 1085(a)(3) and (m)(1)(B) of this title] shall apply with respect to the determination (and appeals from determinations) of cohort default rates for fiscal year 1989 and any succeeding fiscal year.”

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE

Section 301(b) of Pub. L. 99-498 provided that: “The amendment made by subsection (a) [enacting this subchapter] shall take effect July 1, 1987.”

#### PART A—STRENGTHENING INSTITUTIONS

### § 1057. Program purpose

#### (a) General authorization

The Secretary shall carry out a program, in accordance with this part, to improve the academic quality, institutional management, and fiscal stability of eligible institutions, in order to increase their self-sufficiency and strengthen their capacity to make a substantial contribution to the higher education resources of the Nation.

#### (b) Grants awarded; special consideration

(1) From the sums available for this part under section 1068h(a)(1) of this title, the Secretary may award grants to any eligible institution with an application approved under section 1068 of this title in order to assist such an institution to plan, develop, or implement activities that promise to strengthen the institution.

(2) Special consideration shall be given to any eligible institution—

(A) which has endowment funds (other than any endowment fund built under section 1065 of this title as in effect on September 30, 1986, and under part B of this subchapter) the market value of which, per full-time equivalent student, is less than the average current market value of the endowment funds, per full-time equivalent student (other than any endowment fund built under section 1065 of this

title as in effect on September 30, 1986, and under part B of this subchapter) at similar institutions; or

(B) which has expenditures per full-time equivalent student for library materials which is less than the average of the expenditures for library materials per full-time equivalent student by other similarly situated institutions.

(3) Special consideration shall be given to applications which propose, pursuant to the institution's plan, to engage in—

(A) faculty development;

(B) funds and administrative management;

(C) development and improvement of academic programs;

(D) acquisition of equipment for use in strengthening funds management and academic programs;

(E) joint use of facilities such as libraries and laboratories; and

(F) student services, including services that will assist in the education of special populations.

#### (c) Authorized activities

Grants awarded under this section shall be used for 1 or more of the following activities:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

(2) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including the integration of computer technology into institutional facilities to create smart buildings.

(3) Support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in the field of instruction of the faculty.

(4) Development and improvement of academic programs.

(5) Purchase of library books, periodicals, and other educational materials, including telecommunications program material.

(6) Tutoring, counseling, and student service programs designed to improve academic success, including innovative, customized, instruction courses designed to help retain students and move the students rapidly into core courses and through program completion, which may include remedial education and English language instruction.

(7) Education or counseling services designed to improve the financial literacy and economic literacy of students or the students' families.

(8) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management.

(9) Joint use of facilities, such as laboratories and libraries.

(10) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.

(11) Establishing or improving an endowment fund.

(12) Creating or improving facilities for Internet or other distance education technologies, including purchase or rental of tele-

communications technology equipment or services.

(13) Other activities proposed in the application submitted pursuant to subsection (b) and section 1068 of this title that—

(A) contribute to carrying out the purposes of the program assisted under this part; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

**(d) Endowment fund**

**(1) In general**

An eligible institution may use not more than 20 percent of the grant funds provided under this part to establish or increase an endowment fund at such institution.

**(2) Matching requirement**

In order to be eligible to use grant funds in accordance with paragraph (1), the eligible institution shall provide matching funds from non-Federal sources, in an amount equal to or greater than the Federal funds used in accordance with paragraph (1), for the establishment or increase of the endowment fund.

**(3) Comparability**

The provisions of part C of this subchapter, regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with this subsection, shall apply to funds used under paragraph (1).

(Pub. L. 89-329, title III, §311, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1291; amended Pub. L. 100-50, §2(a)(1), June 3, 1987, 101 Stat. 335; Pub. L. 105-244, title III, §301(c)(1), 303(a), Oct. 7, 1998, 112 Stat. 1636, 1638; Pub. L. 110-315, title III, §301, Aug. 14, 2008, 122 Stat. 3166.)

**PRIOR PROVISIONS**

A prior section 1057, Pub. L. 89-329, title III, §311, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1391, enumerated purposes and established grant authority for program to strengthen eligible institutions, prior to the general revision of this subchapter by Pub. L. 99-498.

**AMENDMENTS**

2008—Subsec. (b)(1). Pub. L. 110-315, §301(1)(A), made technical amendment to reference in original act which appears in text as reference to section 1068 of this title.

Subsec. (b)(3)(F). Pub. L. 110-315, §301(1)(B), inserted “, including services that will assist in the education of special populations” before period at end.

Subsec. (c)(6). Pub. L. 110-315, §301(2)(A), inserted “, including innovative, customized, instruction courses designed to help retain students and move the students rapidly into core courses and through program completion, which may include remedial education and English language instruction” before period at end.

Subsec. (c)(7) to (13). Pub. L. 110-315, §301(2)(B)–(E), added par. (7), redesignated former pars. (7) to (12) as pars. (8) to (13), respectively, in par. (12), substituted “distance education technologies” for “distance learning academic instruction capabilities” and, in introductory provisions of par. (13), substituted “subsection (b) and section 1068 of this title” for “subsection (c)”.

1998—Subsec. (b)(1). Pub. L. 105-244, §301(c)(1), substituted “section 1068h(a)(1)” for “section 1069f(a)(1)”.

Subsecs. (c), (d). Pub. L. 105-244, §303(a), added subsecs. (c) and (d).

1987—Subsec. (b)(1). Pub. L. 100-50 substituted “section 1069f(a)(1) of this title” for “section 1069d(a)(1) of this title”.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

**EFFECTIVE DATE OF 1987 AMENDMENT**

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

**§ 1058. Definitions; eligibility**

**(a) Educational and general expenditures**

For the purpose of this part, the term “educational and general expenditures” means the total amount expended by an institution of higher education for instruction, research, public service, academic support (including library expenditures), student services, institutional support, scholarships and fellowships, operation and maintenance expenditures for the physical plant, and any mandatory transfers which the institution is required to pay by law.

**(b) Eligible institution**

For the purpose of this part, the term “eligible institution” means—

(1) an institution of higher education—

(A) which has an enrollment of needy students as required by subsection (d);

(B) except as provided in section 1068a(b) of this title, the average educational and general expenditures of which are low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction;

(C) which is—

(i) legally authorized to provide, and provides within the State, an educational program for which such institution awards a bachelor’s degree;

(ii) a junior or community college; or

(iii) the College of the Marshall Islands, the College of Micronesia/Federated States of Micronesia, and Palau Community College;

(D) which is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be reliable authority as to the quality of training offered or which is, according to such an agency or association, making reasonable progress toward accreditation;

(E) which meets such other requirements as the Secretary may prescribe; and

(F) located in a State; and

(2) any branch of any institution of higher education described under paragraph (1) which by itself satisfies the requirements contained in subparagraphs (A) and (B) of such paragraph.

For purposes of the determination of whether an institution is an eligible institution under this paragraph,<sup>1</sup> the factor described under para-

<sup>1</sup> So in original. Probably should be “subsection.”

graph (1)(A) shall be given twice the weight of the factor described under paragraph (1)(B).

**(c) Endowment fund**

For the purpose of this part, the term “endowment fund” means a fund that—

- (1) is established by State law, by an institution of higher education, or by a foundation that is exempt from Federal income taxation;
- (2) is maintained for the purpose of generating income for the support of the institution; and
- (3) does not include real estate.

**(d) Enrollment of needy students**

Except as provided in section 1059e(b) of this title, for the purpose of this part, the term “enrollment of needy students” means an enrollment at an institution of higher education or a junior or community college which includes—

- (1) at least 50 percent of the degree students so enrolled who are receiving need-based assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 in the second fiscal year preceding the fiscal year for which the determination is being made (other than loans for which an interest subsidy is paid pursuant to section 1078 of this title), or
- (2) a substantial percentage of students receiving Pell Grants in the second fiscal year preceding the fiscal year for which determination is being made, in comparison with the percentage of students receiving Pell Grants at all such institutions in the second fiscal year preceding the fiscal year for which the determination is made, unless the requirement of this paragraph is waived under section 1068a(a) of this title.

**(e) Full-time equivalent students**

For the purpose of this part, the term “full-time equivalent students” means the sum of the number of students enrolled full time at an institution, plus the full-time equivalent of the number of students enrolled part time (determined on the basis of the quotient of the sum of the credit hours of all part-time students divided by 12) at such institution.

**(f) Junior or community college**

For the purpose of this part, the term “junior or community college” means an institution of higher education—

- (1) that admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located and who have the ability to benefit from the training offered by the institution;
- (2) that does not provide an educational program for which it awards a bachelor's degree (or an equivalent degree); and
- (3) that—
  - (A) provides an educational program of not less than 2 years that is acceptable for full credit toward such a degree, or
  - (B) offers a 2-year program in engineering, mathematics, or the physical or biological sciences, designed to prepare a student to work as a technician or at the semi-professional level in engineering, scientific,

or other technological fields requiring the understanding and application of basic engineering, scientific, or mathematical principles of knowledge.

**(g) Low-income individual**

For the purpose of this part, the term “low-income individual” means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census.

**(h) Historically black college or university**

For the purposes of this section, no historically black college or university which is eligible for and receives funds under part B of this subchapter is eligible for or may receive funds under this part.

(Pub. L. 89-329, title III, §312, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1292; amended Pub. L. 100-50, §2(a)(2)-(6), June 3, 1987, 101 Stat. 335; Pub. L. 100-369, §10(a), July 18, 1988, 102 Stat. 837; Pub. L. 102-325, title III, §302(a), (b), July 23, 1992, 106 Stat. 472; Pub. L. 103-208, §2(a)(5), Dec. 20, 1993, 107 Stat. 2457; Pub. L. 103-382, title III, §353, Oct. 20, 1994, 108 Stat. 3966; Pub. L. 105-244, title III, §§301(c)(2), 303(b), Oct. 7, 1998, 112 Stat. 1636, 1639; Pub. L. 110-315, title III, §§302, 305(b), Aug. 14, 2008, 122 Stat. 3167, 3173.)

PRIOR PROVISIONS

A prior section 1058, Pub. L. 89-329, title III, §312, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1391, defined terms used in this subchapter, prior to the general revision of this subchapter by Pub. L. 99-498.

AMENDMENTS

2008—Subsec. (b)(1)(A). Pub. L. 110-315, §302(1), substituted “subsection (d)” for “subsection (c) of this section”.

Subsec. (d). Pub. L. 110-315, §305(b), substituted “Except as provided in section 1059e(b) of this title, for the purpose” for “For the purpose” in introductory provisions.

Subsec. (d)(2). Pub. L. 110-315, §302(2), substituted “paragraph” for “subdivision”.

Subsecs. (g), (h). Pub. L. 110-315, §302(3), (4), added subsec. (g) and redesignated former subsec. (g) as (h).

1998—Subsec. (b)(1)(B). Pub. L. 105-244, §301(c)(2)(A), substituted “section 1068a(b)” for “section 1067(b)”.

Subsec. (c). Pub. L. 105-244, §303(b)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(2). Pub. L. 105-244, §301(c)(2)(B), substituted “section 1068a(a)” for “section 1067(a)”.

Subsecs. (d) to (g). Pub. L. 105-244, §303(b)(1), redesignated subsecs. (c) to (f) as (d) to (g), respectively.

1994—Subsec. (b)(1)(C). Pub. L. 103-382, §353(1), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: “(C)(i) which is legally authorized to provide, and provides within the State, an educational program for which it awards a bachelor's degree, or (ii) which is a junior or community college;”.

Subsec. (b)(1)(F). Pub. L. 103-382, §353(2), (3), added subpar. (F).

1993—Subsec. (c)(2). Pub. L. 103-208 inserted “the” after “such institutions in”.

1992—Subsec. (b)(1), (2). Pub. L. 102-325, §302(a)(1), (2), inserted “and” at end of subpar. (D), struck out subpar. (E), redesignated subpar. (F) as (E) and inserted “and” at end, and substituted period for semicolon at end of par. (2). Prior to amendment, subpar. (E) of par. (1) read as follows: “except as provided in section 1067(b) of this title which has, during the 5 academic years preceding

the academic year for which it seeks assistance under this part—

“(i) met the requirement of either subparagraph (C)(i) or (C)(ii), or of both such subparagraphs (simultaneously or consecutively); and

“(ii) met the requirement of subparagraph (D); and”.

Subsec. (b)(3) to (5). Pub. L. 102-325, §302(a)(3), struck out pars. (3) to (5) which read as follows:

“(3) any institution of higher education which has an enrollment of which at least 20 percent are Mexican American, Puerto Rican, Cuban, or other Hispanic students, or combination thereof, and which also satisfies the requirements of subparagraphs (A), (B), (C), and (D) of paragraph (1);

“(4) any institution of higher education which has an enrollment of at least 60 percent American Indian, or in the case of Alaska natives, an enrollment of at least 5 percent, and which also satisfies the requirements of subparagraphs (A), (B), (C), and (D) of paragraph (1); and

“(5) any institution of higher education which has an enrollment of which at least 5 percent are Native Hawaiian, Asian American, American Samoan, Micronesian, Guamanian (Chamorro), and Northern Marianian, or any combination thereof, and which also satisfies the requirements of subparagraphs (A), (B), (C), and (D) of paragraph (1).”

Subsec. (c)(2). Pub. L. 102-325, §302(b), substituted “second fiscal year preceding the fiscal year for which the determination is made, unless the requirement” for “second preceding fiscal year, unless the requirement”.

1988—Subsec. (f). Pub. L. 100-369 added subsec. (f).

1987—Subsec. (b)(1)(C), (D). Pub. L. 100-50, §2(a)(2)(A), inserted “which” before “is” wherever appearing.

Subsec. (b)(1)(E). Pub. L. 100-50, §2(a)(2)(B), inserted “which” before “has”.

Subsec. (b)(1)(F). Pub. L. 100-50, §2(a)(2)(C), inserted “which” before “meets”.

Subsec. (b)(3), (5). Pub. L. 100-50, §2(a)(3), (4), substituted “subparagraphs (A), (B), (C), and (D)” for “subparagraphs (A) and (B)”.

Subsec. (c)(1). Pub. L. 100-50, §2(a)(5), inserted “in the second fiscal year preceding the fiscal year for which the determination is being made” after “chapter 34 of title 42”.

Subsec. (c)(2). Pub. L. 100-50, §2(a)(6), substituted “fiscal year preceding the fiscal year for which determination is being made” for “preceding fiscal year” and “second preceding fiscal year” for “such fiscal year”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

### § 1059. Duration of grant

#### (a) Award period

The Secretary may award a grant to an eligible institution under this part for 5 years.

#### (b) Limitations

In awarding grants under this part the Secretary shall give priority to applicants who are not already receiving a grant under this part, except that for the purpose of this subsection a grant under subsection (c) of this section and a grant under section 1068c(a)(1) of this title shall not be considered a grant under this part.

#### (c) Planning grants

Notwithstanding subsection (a) of this section, the Secretary may award a grant to an eligible institution under this part for a period of one year for the purpose of preparation of plans and applications for a grant under this part.

#### (d) Wait-out-period

Each eligible institution that received a grant under this part for a 5-year period shall not be eligible to receive an additional grant under this part until 2 years after the date on which the 5-year grant period terminates.

(Pub. L. 89-329, title III, §313, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1294; amended Pub. L. 102-325, title III, §302(c), July 23, 1992, 106 Stat. 472; Pub. L. 103-208, §2(a)(6), Dec. 20, 1993, 107 Stat. 2457; Pub. L. 105-244, title III, §§301(c)(3), 303(c), Oct. 7, 1998, 112 Stat. 1637, 1639.)

#### PRIOR PROVISIONS

A prior section 1059, Pub. L. 89-329, title III, §313, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1392, provided for duration of grants under this part, prior to the general revision of this subchapter by Pub. L. 99-498.

#### AMENDMENTS

1998—Subsec. (b). Pub. L. 105-244, §303(c)(1), inserted “subsection (c) of this section and a grant under” after “this subsection a grant under”.

Pub. L. 105-244, §301(c)(3), substituted “section 1068c(a)(1)” for “section 1069(a)(1)”.

Subsec. (d). Pub. L. 105-244, §303(c)(2), added subsec. (d).

1993—Subsec. (b). Pub. L. 103-208 inserted before period at end “, except that for the purpose of this subsection a grant under section 1069(a)(1) of this title shall not be considered a grant under this part”.

1992—Subsecs. (a), (b). Pub. L. 102-325 amended subsecs. (a) and (b) generally, substituting present provisions for provisions which related: in subsec. (a), to the awarding of grants for not to exceed 3, 4, or 5 years; and in subsec. (b), to waiting periods for awarding of subsequent grants.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

### § 1059a. Applications

Each eligible institution desiring to receive assistance under this part shall submit an appli-

cation in accordance with the requirements of section 1068 of this title.

(Pub. L. 89-329, title III, §314, as added Pub. L. 105-244, title III, §303(d), Oct. 7, 1998, 112 Stat. 1639.)

#### PRIOR PROVISIONS

A prior section 1059a, Pub. L. 89-329, title III, §314, as added Pub. L. 100-50, §2(b), June 3, 1987, 101 Stat. 336, related to application review process, prior to repeal by Pub. L. 105-244, §3, title III, §303(d), Oct. 7, 1998, 112 Stat. 1585, 1639, effective Oct. 1, 1998.

#### EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

### § 1059b. Goals for financial management and academic program

#### (a) Goals

Any application for a grant under this part shall describe measurable goals for the institution's financial management and academic programs, and include a plan of how the applicant intends to achieve those goals.

#### (b) Continuation requirements

Any continuation application shall demonstrate the progress made toward achievement of the goals described pursuant to subsection (a) of this section.

(Pub. L. 89-329, title III, §315, as added Pub. L. 102-325, title III, §302(d)(1), July 23, 1992, 106 Stat. 472.)

#### EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

### § 1059c. American Indian tribally controlled colleges and universities

#### (a) Program authorized

The Secretary shall provide grants and related assistance to Tribal Colleges and Universities to enable such institutions to improve and expand their capacity to serve Indian students.

#### (b) Definitions

In this section:

##### (1) Indian

The term "Indian" has the meaning given the term in section 2 of the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 1801].

##### (2) Indian tribe

The term "Indian tribe" has the meaning given the term in section 2 of the Tribally Controlled Colleges and Universities Assistance Act of 1978 [25 U.S.C. 1801].

##### (3) Tribal College or University

The term "Tribal College or University" means an institution that—

(A) qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801 et seq.) or the Navajo Community College Act (25 U.S.C. 640a note);<sup>1</sup> or

(B) is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note).

#### (4) Institution of higher education

The term "institution of higher education" means an institution of higher education as defined in section 1001(a) of this title, except that paragraph (2) of such section shall not apply.

#### (c) Authorized activities

##### (1) In general

Grants awarded under this section shall be used by Tribal Colleges or Universities to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions' capacity to serve Indian students.

##### (2) Examples of authorized activities

The activities described in paragraph (1) may include—

(A) purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(B) construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services, and the acquisition of real property adjacent to the campus of the institution on which to construct such facilities;

(C) support of faculty exchanges, faculty development, and faculty fellowships to assist in attaining advanced degrees in the faculty's field of instruction or in tribal governance or tribal public policy;

(D) academic instruction in disciplines in which Indians are underrepresented and instruction in tribal governance or tribal public policy;

(E) purchase of library books, periodicals, and other educational materials, including telecommunications program material;

(F) tutoring, counseling, and student service programs designed to improve academic success;

(G) education or counseling services designed to improve the financial literacy and economic literacy of students or the students' families;

(H) funds management, administrative management, and acquisition of equipment for use in strengthening funds management;

(I) joint use of facilities, such as laboratories and libraries;

(J) establishing or improving a development office to strengthen or improve contributions from alumni and the private sector;

(K) establishing or enhancing a program of teacher education designed to qualify students to teach in elementary schools or secondary schools, with a particular emphasis on teaching Indian children and youth, that shall include, as part of such program, preparation for teacher certification;

(L) establishing community outreach programs that encourage Indian elementary

<sup>1</sup> See References in Text note below.

school and secondary school students to develop the academic skills and the interest to pursue postsecondary education;

(M) developing or improving facilities for Internet use or other distance education technologies; and

(N) other activities proposed in the application submitted pursuant to subsection (d) of this section that—

(i) contribute to carrying out the activities described in subparagraphs (A) through (M); and

(ii) are approved by the Secretary as part of the review and acceptance of such application.

### **(3) Endowment fund**

#### **(A) In general**

A Tribal College or University may use not more than 20 percent of the grant funds provided under this section to establish or increase an endowment fund at the institution.

#### **(B) Matching requirement**

In order to be eligible to use grant funds in accordance with subparagraph (A), the Tribal College or University shall provide matching funds, in an amount equal to the Federal funds used in accordance with subparagraph (A), for the establishment or increase of the endowment fund.

#### **(C) Comparability**

The provisions of part C of this subchapter regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with this paragraph, shall apply to funds used under subparagraph (A).

### **(d) Application, plan, and allocation**

#### **(1) Institutional eligibility**

To be eligible to receive assistance under this section, a Tribal College or University shall be an eligible institution under section 1058(b) of this title.

#### **(2) Application**

##### **(A) In general**

A Tribal College or University desiring to receive assistance under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may reasonably require.

##### **(B) Streamlined process**

The Secretary shall establish application requirements in such a manner as to simplify and streamline the process for applying for grants under this section.

### **(3) Awards and allocations to institutions**

#### **(A) Construction grants**

##### **(i) In general**

Of the amount appropriated to carry out this section for any fiscal year, the Secretary may reserve 30 percent for the purpose of awarding one-year grants of not less than \$1,000,000 to address construction, maintenance, and renovation needs at eligible institutions.

##### **(ii) Preference**

In providing grants under clause (i) for any fiscal year, the Secretary shall give preference to eligible institutions that have not received an award under this section for a previous fiscal year.

### **(B) Allotment of remaining funds**

#### **(i) In general**

Except as provided in clause (ii), the Secretary shall distribute the remaining funds appropriated for any fiscal year to each eligible institution as follows:

(I) 60 percent of the remaining appropriated funds shall be distributed among the eligible Tribal Colleges and Universities on a pro rata basis, based on the respective Indian student counts (as defined in section 2(a) of the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801(a))<sup>2</sup> of the Tribal Colleges and Universities.

(II) The remaining 40 percent shall be distributed in equal shares to the eligible Tribal Colleges and Universities.

#### **(ii) Minimum grant**

The amount distributed to a Tribal College or University under clause (i) shall not be less than \$500,000.

### **(4) Special rules**

#### **(A) Concurrent funding**

No Tribal College or University that receives funds under this section shall concurrently receive funds under any other provision of this part, part B, or part A of subchapter V.

#### **(B) Exemption**

Section 1059(d) of this title shall not apply to institutions that are eligible to receive funds under this section.

(Pub. L. 89-329, title III, §316, as added Pub. L. 102-325, title III, §302(d)(1), July 23, 1992, 106 Stat. 473; amended Pub. L. 103-208, §2(a)(7), Dec. 20, 1993, 107 Stat. 2457; Pub. L. 105-244, title III, §303(e), Oct. 7, 1998, 112 Stat. 1639; Pub. L. 106-211, §1(a), (b)(1), May 26, 2000, 114 Stat. 330; Pub. L. 110-315, title III, §303, Aug. 14, 2008, 122 Stat. 3167; Pub. L. 111-39, title III, §301(1), July 1, 2009, 123 Stat. 1936.)

#### REFERENCES IN TEXT

The Tribally Controlled Colleges and Universities Assistance Act of 1978, referred to in subsec. (b)(3)(A), is Pub. L. 95-471, Oct. 17, 1978, 92 Stat. 1325, which is classified principally to chapter 20 (§1801 et seq.) of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1801 of Title 25 and Tables.

The Navajo Community College Act, referred to in subsec. (b)(3)(A), is Pub. L. 92-189, Dec. 15, 1971, 85 Stat. 646, which is classified to section 640a et seq. of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 640a of Title 25 and Tables.

Section 532 of the Equity in Educational Land-Grant Status Act of 1994, referred to in subsec. (b)(3)(B), is section 532 of Pub. L. 103-382, which is set out in a note under section 301 of Title 7, Agriculture.

<sup>2</sup>So in original. Probably should be followed by a third closing parenthesis.



## AMENDMENTS

2009—Subsec. (a). Pub. L. 111-39, §301(1)(A), substituted “Tribal” for “Indian Tribal”.

Subsec. (b)(1), (2). Pub. L. 111-39, §301(1)(B)(i), (ii), substituted “the Tribally Controlled Colleges and Universities Assistance Act of 1978” for “the Tribally Controlled College or University Assistance Act of 1978”.

Subsec. (b)(3)(A). Pub. L. 111-39, §301(1)(B)(iii), substituted “the Navajo Community College Act” for “the Navajo Community College Assistance Act of 1978”.

2008—Subsec. (b)(3). Pub. L. 110-315, §303(1), added par. (3) and struck out former par. (3). Prior to amendment, text read as follows: “The term ‘Tribal College or University’ has the meaning give the term ‘tribally controlled college or university’ in section 1801 of title 25, and includes an institution listed in the Equity in Educational Land Grant Status Act of 1994.

Subsec. (c)(2)(B). Pub. L. 110-315, §303(2)(A), added subpar. (B) and struck out former subpar. (B) which read as follows: “construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;”.

Subsec. (c)(2)(C). Pub. L. 110-315, §303(2)(B), inserted “or in tribal governance or tribal public policy” before semicolon at end.

Subsec. (c)(2)(D). Pub. L. 110-315, §303(2)(C), inserted “and instruction in tribal governance or tribal public policy” before semicolon at end.

Subsec. (c)(2)(G) to (N). Pub. L. 110-315, §303(2)(D)–(H), added subpars. (G) and (M), redesignated former subpars. (G), (H), (I), (J), (K), and (L) as subpars. (H), (I), (J), (K), (L), and (N), respectively, and in subpar. (N)(i) substituted “subparagraphs (A) through (M)” for “subparagraphs (A) through (K)”.

Subsec. (d). Pub. L. 110-315, §303(3), added subsec. (d) and struck out former subsec. (d) which related to the application process for assistance under this section.

2000—Subsec. (d)(2). Pub. L. 106-211, §1(a), inserted after first sentence “The Secretary shall, to the extent possible, prescribe a simplified and streamlined format for such applications that takes into account the limited number of institutions that are eligible for assistance under this section.”

Subsec. (d)(3). Pub. L. 106-211, §1(b)(1), added par. (3) and struck out heading and text of former par. (3). Text read as follows: “For the purposes of this part, no Tribal College or University that is eligible for and receives funds under this section may concurrently receive other funds under this part or part B of this subchapter.”

1998—Pub. L. 105-244 amended section catchline and text generally. Prior to amendment, text consisted of subsecs. (a) to (e) authorizing grants and related assistance to Hispanic-serving institutions to enable such institutions to improve and expand their capacity to serve Hispanic and other low-income students.

1993—Subsec. (c). Pub. L. 103-208 substituted “(2) EXAMPLES OF AUTHORIZED ACTIVITIES.—Such programs may include—” for “Such programs may include—”.

## EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

## EFFECTIVE DATE OF 2000 AMENDMENT

Pub. L. 106-211, §1(c), May 26, 2000, 114 Stat. 331, provided that: “The amendments made by this Act [amending this section and section 1059d of this title] shall be effective on the date of the enactment of this Act [May 26, 2000].”

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

## EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

## EFFECTIVE DATE

Section effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

### § 1059d. Alaska Native and Native Hawaiian-serving institutions

#### (a) Program authorized

The Secretary shall provide grants and related assistance to Alaska Native-serving institutions and Native Hawaiian-serving institutions to enable such institutions to improve and expand their capacity to serve Alaska Natives and Native Hawaiians.

#### (b) Definitions

For the purpose of this section—

(1) the term “Alaska Native” has the meaning given the term in section 7546 of this title;

(2) the term “Alaska Native-serving institution” means an institution of higher education that—

(A) is an eligible institution under section 1058(b) of this title; and

(B) at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students;

(3) the term “Native Hawaiian” has the meaning given the term in section 7517 of this title; and

(4) the term “Native Hawaiian-serving institution” means an institution of higher education which—

(A) is an eligible institution under section 1058(b) of this title; and

(B) at the time of application, has an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students.

#### (c) Authorized activities

##### (1) Types of activities authorized

Grants awarded under this section shall be used by Alaska Native-serving institutions and Native Hawaiian-serving institutions to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions’ capacity to serve Alaska Natives or Native Hawaiians.

##### (2) Examples of authorized activities

Such programs may include—

(A) purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(B) renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(C) support of faculty exchanges, and faculty development and faculty fellowships to assist in attaining advanced degrees in the faculty’s field of instruction;

(D) curriculum development and academic instruction;

(E) purchase of library books, periodicals, microfilm, and other educational materials;

(F) funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(G) joint use of facilities such as laboratories and libraries;

(H) academic tutoring and counseling programs and student support services; and

(I) education or counseling services designed to improve the financial literacy and economic literacy of students or the students' families.

#### (d) Application process

##### (1) Institutional eligibility

Each Alaska Native-serving institution and Native Hawaiian-serving institution desiring to receive assistance under this section shall submit to the Secretary such enrollment data as may be necessary to demonstrate that the institution is an Alaska Native-serving institution or a Native Hawaiian-serving institution as defined in subsection (b) of this section, along with such other information and data as the Secretary may by regulation require.

##### (2) Applications

Any institution which is determined by the Secretary to be an Alaska Native-serving institution or a Native Hawaiian-serving institution may submit an application for assistance under this section to the Secretary. The Secretary shall, to the extent possible, prescribe a simplified and streamlined format for such applications that takes into account the limited number of institutions that are eligible for assistance under this section. Such application shall include—

(A) a 5-year plan for improving the assistance provided by the Alaska Native-serving institution or the Native Hawaiian-serving institution to Alaska Native or Native Hawaiian students; and

(B) such other information and assurance as the Secretary may require.

##### (3) Special rules

###### (A) Eligibility

No Alaskan Native-serving institution or Native Hawaiian-serving institution that receives funds under this section shall concurrently receive funds under other provisions of this part or part B of this subchapter.

###### (B) Exemption

Section 1059(d) of this title shall not apply to institutions that are eligible to receive funds under this section.

###### (C) Distribution

In awarding grants under this section, the Secretary shall, to the extent possible and consistent with the competitive process under which such grants are awarded, ensure maximum and equitable distribution among all eligible institutions.

(Pub. L. 89-329, title III, §317, as added Pub. L. 105-244, title III, §303(f), Oct. 7, 1998, 112 Stat. 1641; amended Pub. L. 106-211, §1(a), (b)(2), May 26, 2000, 114 Stat. 330; Pub. L. 107-110, title VII,

§702(a), Jan. 8, 2002, 115 Stat. 1946; Pub. L. 110-315, title III, §304, Aug. 14, 2008, 122 Stat. 3169.)

#### AMENDMENTS

2008—Subsec. (c)(2)(I). Pub. L. 110-315 added subpar. (I).

2002—Subsec. (b)(1). Pub. L. 107-110, §702(a)(1), substituted “section 7546” for “section 7938”.

Subsec. (b)(3). Pub. L. 107-110, §702(a)(2), substituted “section 7517” for “section 7912”.

2000—Subsec. (d)(2). Pub. L. 106-211, §1(a), inserted after first sentence “The Secretary shall, to the extent possible, prescribe a simplified and streamlined format for such applications that takes into account the limited number of institutions that are eligible for assistance under this section.”

Subsec. (d)(3). Pub. L. 106-211, §1(b)(2), added par. (3).

Subsec. (e). Pub. L. 106-211, §1(b)(2), struck out heading and text of subsec. (e). Text read as follows: “For the purposes of this section, no Alaska Native-serving institution or Native Hawaiian-serving institution which is eligible for and receives funds under this section may concurrently receive other funds under this part or part B of this subchapter.”

#### EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107-110 effective Jan. 8, 2002, except with respect to certain noncompetitive programs and competitive programs, see section 5 of Pub. L. 107-110, set out as an Effective Date note under section 6301 of this title.

#### EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

### § 1059e. Predominantly Black Institutions

#### (a) Purpose

It is the purpose of this section to assist Predominantly Black Institutions in expanding educational opportunity through a program of Federal assistance.

#### (b) Definitions

In this section:

##### (1) Eligible institution

The term “eligible institution” means an institution of higher education that—

(A) has an enrollment of needy undergraduate students;

(B) has an average educational and general expenditure that is low, per full-time equivalent undergraduate student, in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions that offer similar instruction, except that the Secretary may apply the waiver requirements described in section 1068a(b) of this title to this subparagraph in the same manner as the Secretary applies the waiver requirements to section 1058(b)(1)(B) of this title;

(C) has an enrollment of undergraduate students that is not less than 40 percent Black American students;

(D) is legally authorized to provide, and provides, within the State an educational program for which the institution of higher education awards a baccalaureate degree or, in the case of a junior or community college, an associate's degree;

(E) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation; and

(F) is not receiving assistance under—

- (i) part B;
- (ii) part A of subchapter V; or
- (iii) an annual authorization of appropriations under the Act of March 2, 1867 (14 Stat. 438; 20 U.S.C. 123).

## **(2) Enrollment of needy students**

The term “enrollment of needy students” means the enrollment at an eligible institution with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(A) in the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(B) come from families that receive benefits under a means-tested Federal benefit program;

(C) attended a public or nonprofit private secondary school that—

(i) is in the school district of a local educational agency that was eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.] for any year during which the student attended such secondary school; and

(ii) for the purpose of this paragraph and for such year of attendance, was determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children meeting a measure of poverty under section 1113(a)(5) of such Act [20 U.S.C. 6313(a)(5)] exceeds 30 percent of the total enrollment of such school; or

(D) are first-generation college students and a majority of such first-generation college students are low-income individuals.

## **(3) First-generation college student**

The term “first-generation college student” has the meaning given the term in section 1070a–11(h) of this title.

## **(4) Low-income individual**

The term “low-income individual” has the meaning given such term in section 1070a–11(h) of this title.

## **(5) Means-tested Federal benefit program**

The term “means-tested Federal benefit program” means a program of the Federal Government, other than a program under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, in which eligibility for the program’s benefits, or the amount of such benefits, are determined on the basis of income or resources of the individual or family seeking the benefit.

## **(6) Predominantly Black Institution**

The term “Predominantly Black Institution” means an institution of higher edu-

cation, as defined in section 1001(a) of this title—

(A) that is an eligible institution with not less than 1,000 undergraduate students;

(B) at which not less than 50 percent of the undergraduate students enrolled at the eligible institution are low-income individuals or first-generation college students; and

(C) at which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor’s or associate’s degree that the eligible institution is licensed to award by the State in which the eligible institution is located.

## **(7) State**

The term “State” means each of the 50 States and the District of Columbia.

## **(c) Grant authority**

### **(1) In general**

The Secretary is authorized to award grants, from allotments under subsection (e), to Predominantly Black Institutions to enable the Predominantly Black Institutions to carry out the authorized activities described in subsection (d).

### **(2) Priority**

In awarding grants under this section the Secretary shall give priority to Predominantly Black Institutions with large numbers or percentages of students described in subsections<sup>1</sup> (b)(1)(A) or (b)(1)(C). The level of priority given to Predominantly Black Institutions with large numbers or percentages of students described in subsection (b)(1)(A) shall be twice the level of priority given to Predominantly Black Institutions with large numbers or percentages of students described in subsection (b)(1)(C).

## **(d) Authorized activities**

### **(1) Required activities**

Grant funds provided under this section shall be used—

(A) to assist the Predominantly Black Institution to plan, develop, undertake, and implement programs to enhance the institution’s capacity to serve more low- and middle-income Black American students;

(B) to expand higher education opportunities for students eligible to participate in programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 by encouraging college preparation and student persistence in secondary school and postsecondary education; and

(C) to strengthen the financial ability of the Predominantly Black Institution to serve the academic needs of the students described in subparagraphs (A) and (B).

### **(2) Additional activities**

Grant funds provided under this section shall be used for one or more of the following activities:

(A) The activities described in paragraphs (1) through (12) of section 1057(c) of this title.

<sup>1</sup> So in original. Probably should be “subsection”.

(B) Academic instruction in disciplines in which Black Americans are underrepresented.

(C) Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary school or secondary school in the State that shall include, as part of such program, preparation for teacher certification or licensure.

(D) Establishing community outreach programs that will encourage elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(E) Other activities proposed in the application submitted pursuant to subsection (f) that—

(i) contribute to carrying out the purpose of this section; and

(ii) are approved by the Secretary as part of the review and approval of an application submitted under subsection (f).

### **(3) Endowment fund**

#### **(A) In general**

A Predominantly Black Institution may use not more than 20 percent of the grant funds provided under this section to establish or increase an endowment fund at the institution.

#### **(B) Matching requirement**

In order to be eligible to use grant funds in accordance with subparagraph (A), a Predominantly Black Institution shall provide matching funds from non-Federal sources, in an amount equal to or greater than the Federal funds used in accordance with subparagraph (A), for the establishment or increase of the endowment fund.

#### **(C) Comparability**

The provisions of part C, regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with this subsection, shall apply to funds used under subparagraph (A).

### **(4) Limitation**

Not more than 50 percent of the grant funds provided to a Predominantly Black Institution under this section may be available for the purpose of constructing or maintaining a classroom, library, laboratory, or other instructional facility.

### **(e) Allotments to Predominantly Black Institutions**

#### **(1) Federal Pell Grant basis**

From the amounts appropriated to carry out this section for any fiscal year, the Secretary shall allot to each Predominantly Black Institution having an application approved under subsection (f) a sum that bears the same ratio to one-half of that amount as the number of Federal Pell Grant recipients in attendance at such institution at the end of the academic year preceding the beginning of that fiscal year, bears to the total number of Federal Pell Grant recipients at all such institutions at the end of such academic year.

#### **(2) Graduates basis**

From the amounts appropriated to carry out this section for any fiscal year, the Secretary

shall allot to each Predominantly Black Institution having an application approved under subsection (f) a sum that bears the same ratio to one-fourth of that amount as the number of graduates for such academic year at such institution, bears to the total number of graduates for such academic year at all such institutions.

### **(3) Graduates seeking a higher degree basis**

From the amounts appropriated to carry out this section for any fiscal year, the Secretary shall allot to each Predominantly Black Institution having an application approved under subsection (f) a sum that bears the same ratio to one-fourth of that amount as the percentage of graduates from such institution who are admitted to and in attendance at, not later than two years after graduation with an associate's degree or a baccalaureate degree, a baccalaureate degree-granting institution or a graduate or professional school in a degree program in disciplines in which Black American students are underrepresented, bears to the percentage of such graduates for all such institutions.

### **(4) Minimum allotment**

#### **(A) In general**

Notwithstanding paragraphs (1), (2), and (3), the amount allotted to each Predominantly Black Institution under this section may not be less than \$250,000.

#### **(B) Insufficient amount**

If the amounts appropriated to carry out this section for a fiscal year are not sufficient to pay the minimum allotment provided under subparagraph (A) for the fiscal year, then the amount of such minimum allotment shall be ratably reduced. If additional sums become available for such fiscal year, such reduced allotment shall be increased on the same basis as the allotment was reduced until the amount allotted equals the minimum allotment required under subparagraph (A).

### **(5) Reallotment**

The amount of a Predominantly Black Institution's allotment under paragraph (1), (2), (3), or (4) for any fiscal year that the Secretary determines will not be needed for such institution for the period for which such allotment is available, shall be available for reallotment to other Predominantly Black Institutions in proportion to the original allotments to such other institutions under this section for such fiscal year. The Secretary shall reallot such amounts from time to time, on such date and during such period as the Secretary determines appropriate.

### **(f) Applications**

Each Predominantly Black Institution desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing or accompanied by such information as the Secretary may reasonably require.

#### **(g) Application review process**

Section 1068b of this title shall not apply to applications under this section.

**(h) Duration and carryover**

Any grant funds paid to a Predominantly Black Institution under this section that are not expended or used for the purposes for which the funds were paid within ten years following the date on which the grant was awarded, shall be repaid to the Treasury.

**(i) Special rule on eligibility**

No Predominantly Black Institution that receives funds under this section shall concurrently receive funds under any other provision of this part, part B, or part A of subchapter V.

(Pub. L. 89-329, title III, §318, as added Pub. L. 110-315, title III, §305(a), Aug. 14, 2008, 122 Stat. 3169; amended Pub. L. 111-39, title III, §301(2), July 1, 2009, 123 Stat. 1937.)

## REFERENCES IN TEXT

The Act of March 2, 1867, referred to in subsec. (b)(1)(F)(iii), is act Mar. 2, 1867, ch. 162, 14 Stat. 438. Provisions relating to authorization of appropriations are contained in section 8 of the Act, which is classified to section 123 of this title. For complete classification of this Act to the Code, see Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(2)(C)(i), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27. Part A of title I of the Act is classified generally to part A (§6311 et seq.) of subchapter I of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

## AMENDMENTS

2009—Subsec. (b)(1)(F). Pub. L. 111-39 added subpar. (F) and struck out former subpar. (F) which read as follows: “is not receiving assistance under part B or part A of subchapter V.”

## EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

**§ 1059f. Native American-serving, nontribal institutions****(a) Program authorized**

The Secretary shall provide grants and related assistance to Native American-serving, nontribal institutions to enable such institutions to improve and expand their capacity to serve Native Americans and low-income individuals.

**(b) Definitions**

In this section:

**(1) Native American**

The term “Native American” means an individual who is of a tribe, people, or culture that is indigenous to the United States.

**(2) Native American-serving, nontribal institution**

The term “Native American-serving, nontribal institution” means an institution of higher education, as defined in section 1001(a) of this title, that, at the time of application—

(A) is an eligible institution under section 1058(b) of this title;

(B) has an enrollment of undergraduate students that is not less than 10 percent Native American students; and

(C) is not a Tribal College or University (as defined in section 1059c of this title).

**(c) Authorized activities****(1) Types of activities authorized**

Grants awarded under this section shall be used by Native American-serving, nontribal institutions to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions’ capacity to serve Native Americans and low-income individuals.

**(2) Examples of authorized activities**

Such programs may include—

(A) the purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(B) renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(C) support of faculty exchanges, and faculty development and faculty fellowships to assist faculty in attaining advanced degrees in the faculty’s field of instruction;

(D) curriculum development and academic instruction;

(E) the purchase of library books, periodicals, microfilm, and other educational materials;

(F) funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(G) the joint use of facilities such as laboratories and libraries;

(H) academic tutoring and counseling programs and student support services; and

(I) education or counseling services designed to improve the financial and economic literacy of students or the students’ families.

**(d) Application process****(1) Institutional eligibility**

A Native American-serving, nontribal institution desiring to receive assistance under this section shall submit to the Secretary such enrollment data as may be necessary to demonstrate that the institution is a Native American-serving, nontribal institution, along with such other information and data as the Secretary may reasonably require.

**(2) Applications****(A) Authority to submit applications**

Any institution that is determined by the Secretary to be a Native American-serving, nontribal institution may submit an application for assistance under this section to the Secretary.

**(B) Simplified and streamlined format**

The Secretary shall, to the extent possible, continue to prescribe a simplified and streamlined format for applications under this section that takes into account the limited number of institutions that are eligible for assistance under this section.

**(C) Content**

An application submitted under subparagraph (A) shall include—

- (i) a five-year plan for improving the assistance provided by the Native American-serving, nontribal institution to Native Americans and low-income individuals; and
- (ii) such other information and assurances as the Secretary may reasonably require.

### **(3) Special rules**

#### **(A) Eligibility**

No Native American-serving, nontribal institution that receives funds under this section shall concurrently receive funds under any other provision of this part, part B, or part A of subchapter V.

#### **(B) Exemption**

Section 1059(d) of this title shall not apply to institutions that are eligible to receive funds under this section.

#### **(C) Distribution**

In awarding grants under this section, the Secretary shall, to the extent possible and consistent with the competitive process under which such grants are awarded, ensure maximum and equitable distribution among all eligible institutions.

#### **(D) Minimum grant amount**

The minimum amount of a grant under this section shall be \$200,000.

(Pub. L. 89-329, title III, §319, as added Pub. L. 110-315, title III, §306, Aug. 14, 2008, 122 Stat. 3173.)

### **§ 1059g. Asian American and Native American Pacific Islander-serving institutions**

#### **(a) Program authorized**

The Secretary shall provide grants and related assistance to Asian American and Native American Pacific Islander-serving institutions to enable such institutions to improve and expand their capacity to serve Asian Americans and Native American Pacific Islanders and low-income individuals.

#### **(b) Definitions**

In this section:

##### **(1) Asian American**

The term “Asian American” has the meaning given the term “Asian” in the Office of Management and Budget’s Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity as published on October 30, 1997 (62 Fed. Reg. 58789).

##### **(2) Asian American and Native American Pacific Islander-serving institution**

The term “Asian American and Native American Pacific Islander-serving institution” means an institution of higher education that—

- (A) is an eligible institution under section 1058(b) of this title; and
- (B) at the time of application, has an enrollment of undergraduate students that is not less than 10 percent students who are Asian American or Native American Pacific Islander.

### **(3) Native American Pacific Islander**

The term “Native American Pacific Islander” means any descendant of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States.

### **(c) Authorized activities**

#### **(1) Types of activities authorized**

Grants awarded under this section shall be used by Asian American and Native American Pacific Islander-serving institutions to assist such institutions to plan, develop, undertake, and carry out activities to improve and expand such institutions’ capacity to serve Asian Americans and Native American Pacific Islanders and low-income individuals.

#### **(2) Examples of authorized activities**

Such programs may include—

(A) purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(B) renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(C) support of faculty exchanges, and faculty development and faculty fellowships to assist in attaining advanced degrees in the faculty’s field of instruction;

(D) curriculum development and academic instruction;

(E) purchase of library books, periodicals, microfilm, and other educational materials;

(F) funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(G) joint use of facilities such as laboratories and libraries;

(H) academic tutoring and counseling programs and student support services;

(I) establishing community outreach programs that will encourage elementary school and secondary school students to develop the academic skills and the interest to pursue postsecondary education;

(J) establishing or improving an endowment fund;

(K) academic instruction in disciplines in which Asian Americans and Native American Pacific Islanders are underrepresented;

(L) conducting research and data collection for Asian American and Native American Pacific Islander populations and subpopulations;

(M) establishing partnerships with community-based organizations serving Asian Americans and Native American Pacific Islanders; and

(N) education or counseling services designed to improve the financial and economic literacy of students or the students’ families.

### **(d) Application process**

#### **(1) Institutional eligibility**

Each Asian American and Native American Pacific Islander-serving institution desiring to receive assistance under this section shall submit to the Secretary such enrollment data as

may be necessary to demonstrate that the institution is an Asian American and Native American Pacific Islander-serving institution as defined in subsection (b), along with such other information and data as the Secretary may reasonably require.

### (2) Applications

Any institution that is determined by the Secretary to be an Asian American and Native American Pacific Islander-serving institution may submit an application for assistance under this section to the Secretary. Such application shall include—

(A) a five-year plan for improving the assistance provided by the Asian American and Native American Pacific Islander-serving institution to Asian American and Native American Pacific Islander students and low-income individuals; and

(B) such other information and assurances as the Secretary may reasonably require.

### (3) Special rules

#### (A) Eligibility

No Asian American and Native American Pacific Islander-serving institution that receives funds under this section shall concurrently receive funds under any other provision of this part, part B, or subchapter V.

#### (B) Exemption

Section 1059(d) of this title shall not apply to institutions that are eligible to receive funds under this section.

#### (C) Distribution

In awarding grants under this section, the Secretary shall—

(i) to the extent possible and consistent with the competitive process under which such grants are awarded, ensure maximum and equitable distribution among all eligible institutions; and

(ii) give priority consideration to institutions for which not less than 10 percent of such institution's Asian American and Native American Pacific Islander students are low-income individuals.

(Pub. L. 89-329, title III, §320, as added Pub. L. 110-315, title III, §307, Aug. 14, 2008, 122 Stat. 3175.)

## PART B—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

### § 1060. Findings and purposes

The Congress finds that—

(1) the historically Black colleges and universities have contributed significantly to the effort to attain equal opportunity through postsecondary education for Black, low-income, and educationally disadvantaged Americans;

(2) States and the Federal Government have discriminated in the allocation of land and financial resources to support Black public institutions under the Morrill Act of 1862 [7 U.S.C. 301 et seq.] and its progeny, and against public and private Black colleges and universities in the award of Federal grants and con-

tracts, and the distribution of Federal resources under this chapter and part C of subchapter I of chapter 34 of title 42 and other Federal programs which benefit institutions of higher education;

(3) the current state of Black colleges and universities is partly attributable to the discriminatory action of the States and the Federal Government and this discriminatory action requires the remedy of enhancement of Black postsecondary institutions to ensure their continuation and participation in fulfilling the Federal mission of equality of educational opportunity; and

(4) financial assistance to establish or strengthen the physical plants, financial management, academic resources, and endowments of the historically Black colleges and universities are appropriate methods to enhance these institutions and facilitate a decrease in reliance on governmental financial support and to encourage reliance on endowments and private sources.

(Pub. L. 89-329, title III, §321, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1294.)

#### REFERENCES IN TEXT

The Morrill Act of 1862, referred to in par. (2), is act July 2, 1862, ch. 130, 12 Stat. 503, also known as the First Morrill Act, which is classified generally to subchapter I (§301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

#### PRIOR PROVISIONS

A prior section 1060, Pub. L. 89-329, title III, §321, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1393, set out purpose and grant authority for program of aiding institutions with special needs, prior to the general revision of this subchapter by Pub. L. 99-498.

Another prior section 1060, Pub. L. 90-575, title V, §504, Oct. 16, 1968, 82 Stat. 1062, related to eligibility for student assistance because of conviction of crimes involving force, disruption, or seizure of property of educational institution; refusal to obey regulations or orders and disruption of administration of institution; other misconduct, disciplinary proceedings, and freedom of expression; and description of programs covered by such disqualification, prior to repeal by Pub. L. 92-318, title I, §139B(b), June 23, 1972, 86 Stat. 282.

#### EXECUTIVE ORDER NO. 12320

Ex. Ord. No. 12320, Sept. 15, 1981, 46 F.R. 46107, which provided for the development of a Federal program to achieve a significant increase in the participation by historically Black colleges and universities in Federally sponsored programs, was revoked by Ex. Ord. No. 12677, Apr. 28, 1989, 54 F.R. 18869, formerly set out below.

#### EXECUTIVE ORDER NO. 12677

Ex. Ord. No. 12677, Apr. 28, 1989, 54 F.R. 18869, which provided for the development of a Federal program to achieve a significant increase in the participation by historically Black colleges and universities in Federally sponsored programs, was revoked by Ex. Ord. No. 12876, §13, Nov. 1, 1993, 58 F.R. 58735, formerly set out below.

#### EXECUTIVE ORDER NO. 12876

Ex. Ord. No. 12876, Nov. 1, 1993, 58 F.R. 58735, which established in the Department of Education the President's Board of Advisors on Historically Black Colleges and Universities, a Presidential advisory committee,

was revoked by Ex. Ord. No. 13256, §11, Feb. 12, 2002, 67 F.R. 6825, formerly set out below.

#### EXECUTIVE ORDER NO. 13256

Ex. Ord. No. 13256, Feb. 12, 2002, 67 F.R. 6823, which established in the Office of the Secretary of Education the President's Board of Advisors on Historically Black Colleges and Universities, a Presidential advisory committee, was revoked by Ex. Ord. No. 13532, §4(g), Feb. 26, 2010, 75 F.R. 9752, set out below.

#### EX. ORD. NO. 13532. PROMOTING EXCELLENCE, INNOVATION, AND SUSTAINABILITY AT HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

Ex. Ord. No. 13532, Feb. 26, 2010, 75 F.R. 9749, as amended by Ex. Ord. No. 13569, §4, Apr. 5, 2011, 76 F.R. 19891, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, in order to advance the development of the Nation's full human potential and to advance equal opportunity in higher education, strengthen the capacity of historically black colleges and universities to provide the highest quality education, increase opportunities for these institutions to participate in and benefit from Federal programs, and ensure that our Nation has the highest proportion of college graduates in the world by the year 2020, it is hereby ordered as follows:

**SECTION 1. *Policy.*** Historically black colleges and universities (HBCUs) have made historic and ongoing contributions to the general welfare and prosperity of our country. Established by visionary leaders, America's HBCUs, for over 150 years, have produced many of the Nation's leaders in business, government, academia, and the military and have provided generations of American men and women with hope and educational opportunity. The Nation's 105 HBCUs are located in 20 States, the District of Columbia, and the U.S. Virgin Islands and serve more than 300,000 undergraduate and graduate students. These institutions continue to be important engines of economic growth and community service, and they are proven ladders of intergenerational advancement for men and women of all ethnic, racial, and economic backgrounds, especially African Americans. These institutions also produce a high number of baccalaureate recipients who go on to assume leadership and service roles in their communities and who successfully complete graduate and professional degree programs.

#### **SEC. 2. *White House Initiative on HBCUs.***

(a) *Establishment.* There is established the White House Initiative on Historically Black Colleges and Universities (Initiative), to be housed in the Department of Education (Department).

(b) *Mission and Functions.* The Initiative shall work with executive departments, agencies, and offices, the private sector, educational associations, philanthropic organizations, and other partners to increase the capacity of HBCUs to provide the highest-quality education to a greater number of students, and to take advantage of these institutions' capabilities in serving the Nation's needs through five core tasks:

- (i) strengthening the capacity of HBCUs to participate in Federal programs;
  - (ii) fostering enduring private-sector initiatives and public-private partnerships while promoting specific areas and centers of academic research and programmatic excellence throughout all HBCUs;
  - (iii) improving the availability, dissemination, and quality of information concerning HBCUs to inform public policy and practice;
  - (iv) sharing administrative and programmatic practices within the HBCU community for the benefit of all; and
  - (v) exploring new ways of improving the relationship between the Federal Government and HBCUs.
- (c) *Administration.* There shall be an Executive Director of the Initiative. The Department shall provide the staff, resources, and assistance for the Initiative, and

shall assist the Initiative in fulfilling its mission and responsibilities under this order.

(d) *Federal Agency Plans.* (1) Each executive department and agency designated by the Secretary of Education (Secretary) shall prepare an annual plan (agency plan) of its efforts to strengthen the capacity of HBCUs through increased participation in appropriate Federal programs and initiatives. Where appropriate, each agency plan shall address, among other things, the agency's proposed efforts to:

- (i) establish how the department or agency intends to increase the capacity of HBCUs to compete effectively for grants, contracts, or cooperative agreements and to encourage HBCUs to participate in Federal programs;
- (ii) identify Federal programs and initiatives in which HBCUs may be either underserved or underused as national resources, and improve HBCUs' participation therein; and
- (iii) encourage public-sector, private-sector, and community involvement in improving the overall capacity of HBCUs.

(2) Each department and agency, in its agency plan, shall provide appropriate measurable objectives and, after the first year, shall annually assess that department's or agency's performance on the goals set in the previous year's agency plan.

(3) The Secretary shall establish a date by which agency plans shall be submitted to the Secretary. The Secretary and the Executive Director shall review the agency plans in consultation with the President's Board of Advisors on HBCUs, established in section 3 of this order, and shall submit to the President an annual plan to strengthen the overall capacity of HBCUs.

(4) To help fulfill the objectives of these plans, the head of each department and agency identified by the Secretary shall provide, as appropriate, technical assistance and information to the Executive Director for purposes of communicating with HBCUs concerning program activities of the department or agency and the preparation of applications or proposals for grants, contracts, or cooperative agreements.

(5) To help fulfill the goals of this order, each executive department and agency identified by the Secretary shall appoint a senior official to report directly to the department or agency head with respect to that department's or agency's activities under this order, and to serve as liaison to the President's Board of Advisors on HBCUs and to the Initiative.

(e) *Interagency Working Group.* There is established the Interagency Working Group, which shall be convened by the Executive Director and that shall consist of representatives from agencies designated by the Secretary, to help advance and coordinate the work of Federal agencies pursuant to this order, where appropriate.

#### **SEC. 3. *President's Board of Advisors on HBCUs.***

(a) *Establishment.* There is established in the Department the President's Board of Advisors on Historically Black Colleges and Universities (the Board). The Board shall consist of not more than 25 members appointed by the President. The President shall designate one member of the Board to serve as Chair, who shall coordinate with the Executive Director to convene meetings and help direct the work of the Board. The Board shall include representatives of a variety of sectors, including philanthropy, education, business, finance, entrepreneurship, innovation, and private foundations, as well as sitting HBCU presidents.

(b) *Mission and Functions.* Through the Initiative, the Board shall advise the President and the Secretary on all matters pertaining to strengthening the educational capacity of HBCUs. In particular, the Board shall advise the President and the Secretary in the following areas:

- (i) improving the identity, visibility, and distinctive capabilities and overall competitiveness of HBCUs;
- (ii) engaging the philanthropic, business, government, military, homeland-security, and education communities in a national dialogue regarding new HBCU programs and initiatives;



(iii) improving the ability of HBCUs to remain fiscally secure institutions that can assist the Nation in reaching its goal of having the highest proportion of college graduates by 2020;

(iv) elevating the public awareness of HBCUs; and

(v) encouraging public-private investments in HBCUs.

(c) *Administration.* The Executive Director of the Initiative shall also serve as the Executive Director of the Board. The Department shall provide funding and administrative support for the Board to the extent permitted by law and within existing appropriations. Members of the Board shall serve without compensation, but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law. Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Board, any functions of the President under that Act, except for those of reporting to the Congress, shall be performed by the Secretary, in accordance with guidelines issued by the Administrator of General Services.

(d) *Report.* As part of the annual report of the Initiative, the Board shall report to the President and the Secretary on their progress in carrying out its duties under this section.

SEC. 4. *General Provisions.* (a) For the purposes of this order, “historically black colleges and universities” shall mean those institutions listed in 34 C.F.R. 608.2.

(b) This order shall apply to executive departments and agencies designated by the Secretary. Those departments and agencies shall provide timely reports and such information as is required to effectively carry out the objectives of this order.

(c) The heads of executive departments and agencies shall assist and provide information through the White House Initiative to the Board, consistent with applicable law, as may be necessary to carry out the functions of the Board. Each executive department and agency shall bear its own expenses of participating in the Initiative.

(d) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department, agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(e) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(f) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(g) Executive Order 13256 of February 12, 2002, is hereby revoked.

BARACK OBAMA.

#### EXTENSION OF TERM OF PRESIDENT’S BOARD OF ADVISORS ON HISTORICALLY BLACK COLLEGES AND UNIVERSITIES

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 1997, by Ex. Ord. No. 12974, Sept. 29, 1995, 60 F.R. 51875, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 1999, by Ex. Ord. No. 13062, §1(e), Sept. 29, 1997, 62 F.R. 51755, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2001, by Ex. Ord. No. 13138, Sept. 30, 1999, 64 F.R. 53879, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30,

2003, by Ex. Ord. No. 13225, Sept. 28, 2001, 66 F.R. 50291, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2005, by Ex. Ord. No. 13316, Sept. 17, 2003, 68 F.R. 55255, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2007, by Ex. Ord. No. 13385, Sept. 29, 2005, 70 F.R. 57989, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2009, by Ex. Ord. No. 13446, Sept. 28, 2007, 72 F.R. 56175, formerly set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2011, by Ex. Ord. No. 13511, Sept. 29, 2009, 74 F.R. 50909, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

Term of President’s Board of Advisors on Historically Black Colleges and Universities extended until Sept. 30, 2013, by Ex. Ord. No. 13591, Nov. 23, 2011, 76 F.R. 74623, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5.

#### DETERMINATIONS REGARDING PRESIDENT’S BOARD OF ADVISORS

Memorandum of the President of the United States, Aug. 17, 1990, 55 F.R. 46491, provided:

Memorandum for the Secretary of Education

By virtue of the authority vested in me as President by the Constitution and the laws of the United States of America, including section 208 of title 18 of the United States Code and section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of Education my authority to make determinations under subsection (b) of section 208 of title 18, United States Code, for the members of the President’s Board of Advisors on Historically Black Colleges and Universities, established pursuant to Executive Order 12677 of April 28, 1989 [formerly set out above].

This memorandum shall be published in the Federal Register.

GEORGE BUSH.

#### § 1061. Definitions

For the purpose of this part:

(1) The term “graduate” means an individual who has attended an institution for at least three semesters and fulfilled academic requirements for undergraduate studies in not more than 5 consecutive school years.

(2) The term “part B institution” means any historically Black college or university that was established prior to 1964, whose principal mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered or is, according to such an agency or association, making reasonable progress toward accreditation,<sup>1</sup> except that any branch campus of a southern institution of higher education that prior to September 30, 1986, received a grant as an institution with special

<sup>1</sup> So in original.

needs under section 1060 of this title and was formally recognized by the National Center for Education Statistics as a Historically Black College or University but was determined not to be a part B institution on or after October 17, 1986, shall, from July 18, 1988, be considered a part B institution.

(3) The term “Pell Grant recipient” means a recipient of financial aid under subpart 1 of part A of subchapter IV of this chapter.

(4) The term “professional and academic areas in which Blacks are underrepresented” shall be determined by the Secretary, in consultation with the Commissioner for Education Statistics and the Commissioner of the Bureau of Labor Statistics, on the basis of the most recent available satisfactory data, as professional and academic areas in which the percentage of Black Americans who have been educated, trained, and employed is less than the percentage of Blacks in the general population.

(5) The term “school year” means the period of 12 months beginning July 1 of any calendar year and ending June 30 of the following calendar year.

(Pub. L. 89-329, title III, § 322, as added Pub. L. 99-498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1294; amended Pub. L. 100-369, § 10(c), July 18, 1988, 102 Stat. 838; Pub. L. 110-315, title III, § 308, Aug. 14, 2008, 122 Stat. 3177.)

#### PRIOR PROVISIONS

A prior section 1061, Pub. L. 89-329, title III, § 322, as added Pub. L. 96-374, title III, § 301, Oct. 3, 1980, 94 Stat. 1393, defined terms used in this part, prior to the general revision of this subchapter by Pub. L. 99-498.

Another prior section 1061, Pub. L. 89-329, title IV, § 401, Nov. 8, 1965, 79 Stat. 1232; Pub. L. 90-575, title I, § 101(a), (b)(1), Oct. 16, 1968, 82 Stat. 1017; Pub. L. 91-95, § 4, Oct. 22, 1969, 83 Stat. 143; Pub. L. 92-318, title I, § 131(a)(1)(A), June 23, 1972, 86 Stat. 247, related to statement of purpose and authorization of appropriations for educational opportunity grants, prior to the general revision of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 247.

#### AMENDMENTS

2008—Par. (4). Pub. L. 110-315 inserted “, in consultation with the Commissioner for Education Statistics” before “and the Commissioner”.

1988—Par. (2). Pub. L. 100-369 inserted “, except that any branch campus of a southern institution of higher education that prior to September 30, 1986, received a grant as an institution with special needs under section 1060 of this title and was formally recognized by the National Center for Education Statistics as a Historically Black College or University but was determined not to be a part B institution on or after October 17, 1986, shall, from July 18, 1988, be considered a part B institution” after “accreditation”.

### § 1062. Grants to institutions

#### (a) General authorization; uses of funds

From amounts available under section 1068h(a)(2) of this title for any fiscal year, the Secretary shall make grants (under section 1063 of this title) to institutions which have applications approved by the Secretary (under section 1063a of this title) for any of the following uses:

(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes,

including instructional and research purposes.

(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services.

(3) Support of faculty exchanges, and faculty development and faculty fellowships to assist in attaining advanced degrees in their field of instruction.

(4) Academic instruction in disciplines in which Black Americans are underrepresented.

(5) Purchase of library books, periodicals, microfilm, and other educational materials, including telecommunications program materials.

(6) Tutoring, counseling, and student service programs designed to improve academic success.

(7) Funds and administrative management, and acquisition of equipment for use in strengthening funds management.

(8) Joint use of facilities, such as laboratories and libraries.

(9) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.

(10) Establishing or enhancing a program of teacher education designed to qualify students to teach in a public elementary or secondary school in the State that shall include, as part of such program, preparation for teacher certification.

(11) Establishing community outreach programs which will encourage elementary and secondary students to develop the academic skills and the interest to pursue postsecondary education.

(12) Acquisition of real property in connection with the construction, renovation, or addition to or improvement of campus facilities.

(13) Education or financial information designed to improve the financial literacy and economic literacy of students or the students' families, especially with regard to student indebtedness and student assistance programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(14) Services necessary for the implementation of projects or activities that are described in the grant application and that are approved, in advance, by the Secretary, except that not more than two percent of the grant amount may be used for this purpose.

(15) Other activities proposed in the application submitted pursuant to section 1063a of this title that—

(A) contribute to carrying out the purposes of this part; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

#### (b) Endowment fund

##### (1) In general

An institution may use not more than 20 percent of the grant funds provided under this part to establish or increase an endowment fund at the institution.

##### (2) Matching requirement

In order to be eligible to use grant funds in accordance with paragraph (1), the eligible in-

stitution shall provide matching funds from non-Federal sources, in an amount equal to or greater than the Federal funds used in accordance with paragraph (1), for the establishment or increase of the endowment fund.

### (3) Comparability

The provisions of part C of this subchapter regarding the establishment or increase of an endowment fund, that the Secretary determines are not inconsistent with this subsection, shall apply to funds used under paragraph (1).

### (c) Limitations

(1) No grant may be made under this chapter and part C of subchapter I of chapter 34 of title 42 for any educational program, activity, or service related to sectarian instruction or religious worship, or provided by a school or department of divinity. For the purpose of this subsection, the term “school or department of divinity” means an institution whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation, or to prepare them to teach theological subjects.

(2) Not more than 50 percent of the allotment of any institution may be available for the purpose of constructing or maintaining a classroom, library, laboratory, or other instructional facility.

(Pub. L. 89-329, title III, § 323, as added Pub. L. 99-498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1295; amended Pub. L. 100-50, § 2(a)(7), June 3, 1987, 101 Stat. 335; Pub. L. 100-369, § 10(b), July 18, 1988, 102 Stat. 838; Pub. L. 102-325, title III, § 303(a), (b), July 23, 1992, 106 Stat. 474, 475; Pub. L. 103-208, § 2(a)(8), Dec. 20, 1993, 107 Stat. 2457; Pub. L. 105-244, title III, § 304(a), Oct. 7, 1998, 112 Stat. 1642; Pub. L. 110-315, title III, § 309, Aug. 14, 2008, 122 Stat. 3177; Pub. L. 111-39, title III, § 301(3), July 1, 2009, 123 Stat. 1937.)

#### PRIOR PROVISIONS

A prior section 1062, Pub. L. 89-329, title III, § 323, as added Pub. L. 96-374, title III, § 301, Oct. 3, 1980, 94 Stat. 1395, provided for duration of grants to institutions with special needs, prior to the general revision of this subchapter by Pub. L. 99-498.

Another prior section 1062, Pub. L. 89-329, title IV, § 402, Nov. 8, 1965, 79 Stat. 1232; Pub. L. 90-575, title I, § 102, Oct. 16, 1968, 82 Stat. 1017, related to determination of amount of grant and establishment of basic criteria or schedules, prior to the general revision of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 247.

#### AMENDMENTS

2009—Subsec. (a). Pub. L. 111-39 substituted “for any fiscal year,” for “in any fiscal year” in introductory provisions.

2008—Subsec. (a). Pub. L. 110-315, § 309(1), substituted “section 1068h(a)(2)” for “section 1069f(a)(2)” in introductory provisions.

Subsec. (a)(12) to (15). Pub. L. 110-315, § 309(2), (3), added pars. (12) to (14) and redesignated former par. (12) as (15).

1998—Subsecs. (b), (c). Pub. L. 105-244, § 304(a)(1), (2), added subsec. (b) and redesignated former subsec. (b) as (c).

Subsec. (c)(3). Pub. L. 105-244, § 304(a)(3), struck out par. (3) which read as follows: “The Secretary shall not award a grant under this part for telecommunications

technology equipment, facilities or services, if such equipment, facilities or services are available pursuant to section 396(k) of title 47.”

1993—Subsec. (b)(3). Pub. L. 103-208 realigned margin. 1992—Subsec. (a)(2). Pub. L. 102-325, § 303(a)(1), inserted “, including purchase or rental of telecommunications technology equipment or services” after “facilities”.

Subsec. (a)(5). Pub. L. 102-325, § 303(a)(2), inserted “, including telecommunications program materials” after “materials”.

Subsec. (a)(9) to (12). Pub. L. 102-325, § 303(a)(3), added pars. (9) to (12).

Subsec. (b)(3). Pub. L. 102-325, § 303(b), added par. (3). 1988—Subsec. (a)(3). Pub. L. 100-369, § 10(b)(1), inserted “, and faculty development” after “exchanges”.

Subsec. (a)(7), (8). Pub. L. 100-369, § 10(b)(2), added pars. (7) and (8).

1987—Subsec. (a). Pub. L. 100-50 substituted “section 1069f(a)(2) of this title” for “section 1069d(a)(2) of this title”.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

## § 1063. Allotments to institutions

### (a) Allotment; Pell Grant basis

From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-half that amount as the number of Pell Grant recipients in attendance at such institution at the end of the school year preceding the beginning of that fiscal year bears to the total number of Pell Grant recipients at all part B institutions.

### (b) Allotment; graduates basis

From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall allot to each part B institution a sum which bears the same ratio to one-fourth that amount as the number of graduates for such school year at such institution bears to the total number of graduates for such school year at all part B institutions.

### (c) Allotment; graduate and professional student basis

From the amounts appropriated to carry out this part for any fiscal year, the Secretary shall

allot to each part B institution a sum which bears the same ratio to one-fourth of that amount as the percentage of graduates per institution, who are admitted to and in attendance at, within 5 years of graduation with a baccalaureate degree, a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented, bears to the percentage of such graduates per institution for all part B institutions.

**(d) Minimum allotment**

(1) Notwithstanding subsections (a) through (c), and subject to subsection (h), if the amount of an award under this section for a part B institution, based on the data provided by the part B institution and the formula under subsections (a) through (c), would be—

(A) an amount that is greater than \$250,000 but less than \$500,000, the Secretary shall award the part B institution an allotment in the amount of \$500,000; and

(B) an amount that is equal to or less than \$250,000, the Secretary shall award the part B institution an allotment in the amount of \$250,000.

(2) If the amount appropriated pursuant to section 1068h(a)(2)(A) of this title for any fiscal year is not sufficient to pay the minimum allotment required by paragraph (1) to all part B institutions, the amount of such minimum allotments shall be ratably reduced. If additional sums become available for such fiscal year, such reduced allocations shall be increased on the same basis as the basis on which they were reduced (until the amount allotted equals the minimum allotment required by paragraph (1)).

**(e) Reallocation**

The amount of any part B institution's allotment under subsection (a), (b), (c), or (d) of this section for any fiscal year which the Secretary determines will not be required for such institution for the period such allotment is available shall be available for reallocation from time to time on such date during such period as the Secretary may determine to other part B institutions in proportion to the original allotment to such other institutions under this section for such fiscal year.

**(f) Special merger rule**

(1) The Secretary shall permit any eligible institution for a grant under part B in any fiscal year prior to the fiscal year 1986 to apply for a grant under this part if the eligible institution has merged with another institution of higher education which is not so eligible or has merged with an eligible institution.

(2) The Secretary may establish such regulations as may be necessary to carry out the requirement of paragraph (1) of this subsection.

**(g) Special rule for certain District of Columbia eligible institutions**

In any fiscal year that the Secretary determines that Howard University or the University of the District of Columbia will receive an allotment under subsections (b) and (c) of this section which is not in excess of amounts received by Howard University under the Act of March 2, 1867 (14 Stat. 438; 20 U.S.C. 123), relating to an-

nual authorization of appropriations for Howard University, or by the University of the District of Columbia under the District of Columbia Home Rule Act (87 Stat. 774) for such fiscal year, then Howard University and the University of the District of Columbia, as the case may be, shall be ineligible to receive an allotment under this section.

**(h) Conditions for allotments**

**(1) Student requirements for allotment**

Notwithstanding any other provision of this section, a part B institution that would otherwise be eligible for funds under this part shall not receive an allotment under this part for a fiscal year, including the minimum allotment under subsection (d), if the part B institution, in the academic year preceding such fiscal year—

(A) did not have any enrolled students who were Pell Grant recipients;

(B) did not graduate any students; or

(C) where appropriate, did not have any students who, within 5 years of graduation from the part B institution, were admitted to and in attendance at a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented.

**(2) Data requirements for allotments**

Notwithstanding any other provision of this section, a part B institution shall not receive an allotment under this part for a fiscal year, including the minimum allotment under subsection (d), unless the institution provides the Secretary with the data required by the Secretary and for purposes of the formula described in subsections (a) through (c), including—

(A) the number of Pell Grant recipients enrolled in the part B institution in the academic year preceding such fiscal year;

(B) the number of students who earned an associate or baccalaureate degree from the part B institution in the academic year preceding such fiscal year; and

(C) where appropriate, the percentage of students who, within 5 years of graduation from the part B institution, were admitted to and in attendance at a graduate or professional school in a degree program in disciplines in which Blacks are underrepresented in the academic year preceding such fiscal year.

(Pub. L. 89-329, title III, §324, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1296; amended Pub. L. 99-509, title VII, §7007, Oct. 21, 1986, 100 Stat. 1950; Pub. L. 102-325, title III, §303(c), (d), July 23, 1992, 106 Stat. 475; Pub. L. 105-33, title XI, §11717(b), Aug. 5, 1997, 111 Stat. 786; Pub. L. 110-315, title III, §310, Aug. 14, 2008, 122 Stat. 3177; Pub. L. 111-39, title III, §301(4), July 1, 2009, 123 Stat. 1937.)

REFERENCES IN TEXT

The Act of March 2, 1867, referred to in subsec. (g), is act Mar. 2, 1867, ch. 162, 14 Stat. 438. Provisions relating to authorization of appropriations are contained in section 8 of the Act, which is classified to section 123 of this title. For complete classification of this Act to the Code, see Tables.

The District of Columbia Home Rule Act, referred to in subsec. (g), is Pub. L. 93-198, Dec. 24, 1973, 87 Stat. 774, as amended. For classification of this Act to the Code, see Tables.

#### PRIOR PROVISIONS

A prior section 1063, Pub. L. 89-329, title III, §324, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1395, related to Federal share of grants to institutions with special needs, prior to the general revision of this subchapter by Pub. L. 99-498.

Another prior section 1063, Pub. L. 89-329, title IV, §403, Nov. 8, 1965, 79 Stat. 1233, related to duration of grant and eligibility for payments, prior to the general revision of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 247.

#### AMENDMENTS

2009—Subsec. (d). Pub. L. 111-39 designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, of par. (1), and added par. (2).

2008—Subsec. (d). Pub. L. 110-315, §310(a), amended subsec. (d) generally. Prior to amendment, text read as follows:

“(1) Notwithstanding subsections (a), (b), and (c) of this section, the amount allotted to each part B institution under this section shall not be less than \$500,000.

“(2) If the amount appropriated pursuant to section 1069(a)(2)(A) of this title for any fiscal year is not sufficient to pay the minimum allotment required by paragraph (1) of this subsection to all part B institutions, the amount of such minimum allotments shall be ratably reduced. If additional sums become available for such fiscal year, such reduced allocation shall be increased on the same basis as they were reduced (until the amount allotted equals the minimum allotment required by paragraph (1)).”

Subsec. (h). Pub. L. 110-315, §310(b), added subsec. (h).

1997—Subsec. (g). Pub. L. 105-33 substituted “District of Columbia Home Rule Act” for “District of Columbia Self-Government and Governmental Reorganization Act”.

1992—Subsec. (c). Pub. L. 102-325, §303(c), inserted “, within 5 years of graduation with a baccalaureate degree,” after “in attendance at”.

Subsec. (d)(1). Pub. L. 102-325, §303(d), substituted “\$500,000” for “\$350,000”.

1986—Subsec. (c). Pub. L. 99-509, §7007(4), amended subsec. generally, substituting “percentage of graduates per institution” for “number of graduates” and “percentage of such graduates per institution” for “number of such graduates”.

Subsec. (d). Pub. L. 99-509, §7007(1), (2), added subsec. (d). Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 99-509, §7007(1), (3), redesignated former subsec. (d) as (e), and substituted “subsection (a), (b), (c), or (d) of this section” for “subsection (a), (b), or (c) of this section”. Former subsec. (e) redesignated (f).

Subsecs. (f), (g). Pub. L. 99-509, §7007(1), redesignated subsecs. (e) and (f) as (f) and (g), respectively.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-33 effective Oct. 1, 1997, except as otherwise provided in title XI of Pub. L. 105-33, see section 11721 of Pub. L. 105-33, set out as a note under section 4246 of Title 18, Crimes and Criminal Procedure.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

## § 1063a. Applications

### (a) Contents

No part B institution shall be entitled to its allotment of Federal funds for any grant under section 1063 of this title for any period unless that institution meets the requirements of subparagraphs (C), (D), and (E)<sup>1</sup> of section 1058(b)(1) of this title and submits an application to the Secretary at such time, in such manner, and containing or accompanied by such information, as the Secretary may reasonably require. Each such application shall—

(1) provide that the payments under this chapter and part C of subchapter I of chapter 34 of title 42 will be used for the purposes set forth in section 1062 of this title; and

(2) provide for making an annual report to the Secretary and provide for—

(A) conducting, except as provided in subparagraph (B), a financial and compliance audit of an eligible institution, with regard to any funds obtained by it under this subchapter at least once every 2 years and covering the period since the most recent audit, conducted by a qualified, independent organization or person in accordance with standards established by the Comptroller General for the audit of governmental organizations, programs, and functions, and as prescribed in regulations of the Secretary, the results of which shall be submitted to the Secretary; or

(B) with regard to an eligible institution which is audited under chapter 75 of title 31 deeming such audit to satisfy the requirements of subparagraph (A) for the period covered by such audit.

### (b) Approval

The Secretary shall approve any application which meets the requirements of subsection (a) of this section and shall not disapprove any application submitted under this part, or any modification thereof, without first affording such institution reasonable notice and opportunity for a hearing.

### (c) Goals for financial management and academic programs

Any application for a grant under this part shall describe measurable goals for the institution's financial management and academic programs and include a plan of how the applicant intends to achieve those goals.

(Pub. L. 89-329, title III, §325, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1296; amended Pub. L. 100-50, §2(a)(8), June 3, 1987, 101 Stat. 335; Pub. L. 102-325, title III, §303(e), July 23, 1992, 106 Stat. 475.)

#### REFERENCES IN TEXT

Section 1058(b)(1)(E) of this title, referred to in subsec. (a), was repealed and section 1058(b)(1)(F) was redesignated section 1058(b)(1)(E) by Pub. L. 102-325, title III, §302(a)(1)(B), (C), July 23, 1992, 106 Stat. 472.

#### AMENDMENTS

1992—Subsec. (c). Pub. L. 102-325 added subsec. (c).

1987—Subsec. (a)(1). Pub. L. 100-50 substituted “section 1062 of this title” for “section 1061 of this title”.

<sup>1</sup> See References in Text note below.

## EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

## EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

**§ 1063b. Professional or graduate institutions****(a) General authorization**

(1) Subject to the availability of funds appropriated to carry out this section, the Secretary shall award program grants to each of the postgraduate institutions listed in subsection (e) of this section that is determined by the Secretary to be making a substantial contribution to the legal, medical, dental, veterinary, or other graduate education opportunities in mathematics, engineering, or the physical or natural sciences for Black Americans.

(2) No grant in excess of \$1,000,000 may be made under this section unless the postgraduate institution provides assurances that 50 percent of the cost of the purposes for which the grant is made will be paid from non-Federal sources, except that no institution shall be required to match any portion of the first \$1,000,000 of the institution's award from the Secretary. After funds are made available to each eligible institution under the funding rules described in subsection (f) of this section, the Secretary shall distribute, on a pro rata basis, any amounts which were not so made available (by reason of the failure of an institution to comply with the matching requirements of this paragraph) among the institutions that have complied with such matching requirement.

**(b) Duration**

Grants shall be made for a period not to exceed 5 years. Any funds awarded for such five-year grant period that are obligated during such five-year period may be expended during the 10-year period beginning on the first day of such five-year period.

**(c) Uses of funds**

A grant under this section may be used for—

(1) purchase, rental or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(2) construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services;

(3) purchase of library books, periodicals, technical and other scientific journals, microfilm, microfiche, and other educational materials, including telecommunications program materials;

(4) scholarships, fellowships, and other financial assistance for needy graduate and professional students to permit the enrollment of the students in and completion of the doctoral degree in medicine, dentistry, pharmacy, veterinary medicine, law, and the doctorate de-

gree in the physical or natural sciences, engineering, mathematics, or other scientific disciplines in which African Americans are underrepresented;

(5) establishing or improving a development office to strengthen and increase contributions from alumni and the private sector;

(6) assisting in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 1065 of this title;

(7) funds and administrative management, and the acquisition of equipment, including software, for use in strengthening funds management and management information systems;

(8) acquisition of real property that is adjacent to the campus in connection with the construction, renovation, or addition to or improvement of campus facilities;

(9) education or financial information designed to improve the financial literacy and economic literacy of students or the students' families, especially with regard to student indebtedness and student assistance programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42;

(10) services necessary for the implementation of projects or activities that are described in the grant application and that are approved, in advance, by the Secretary, except that not more than two percent of the grant amount may be used for this purpose;

(11) tutoring, counseling, and student service programs designed to improve academic success; and

(12) other activities proposed in the application submitted under subsection (d) that—

(A) contribute to carrying out the purposes of this part; and

(B) are approved by the Secretary as part of the review and acceptance of such application.

**(d) Application**

Any institution eligible for a grant under this section shall submit an application which—

(1) demonstrates how the grant funds will be used to improve graduate educational opportunities for Black and low-income students, and lead to greater financial independence; and

(2) provides, in the case of applications for grants in excess of \$1,000,000, the assurances required by subsection (a)(2) of this section and specifies the manner in which the eligible institution is going to pay the non-Federal share of the cost of the application.

**(e) Eligibility****(1) In general**

Independent professional or graduate institutions and programs eligible for grants under subsection (a) of this section are the following:

(A) Morehouse School of Medicine;

(B) Meharry Medical School;

(C) Charles R. Drew Postgraduate Medical School;

(D) Clark-Atlanta University;

(E) Tuskegee University School of Veterinary Medicine and other qualified graduate programs;

(F) Xavier University School of Pharmacy and other qualified graduate programs;

(G) Southern University School of Law and other qualified graduate programs;

(H) Texas Southern University School of Law and School of Pharmacy and other qualified graduate programs;

(I) Florida A&M University School of Pharmaceutical Sciences and other qualified graduate programs;

(J) North Carolina Central University School of Law and other qualified graduate programs;

(K) Morgan State University qualified graduate program;

(L) Hampton University qualified graduate program;

(M) Alabama A&M qualified graduate program;

(N) North Carolina A&T State University qualified graduate program;

(O) University of Maryland Eastern Shore qualified graduate program;

(P) Jackson State University qualified graduate program;

(Q) Norfolk State University qualified graduate programs;

(R) Tennessee State University qualified graduate programs;

(S) Alabama State University qualified graduate programs;

(T) Prairie View A&M University qualified graduate programs;

(U) Delaware State University qualified graduate programs;

(V) Langston University qualified graduate programs;

(W) Bowie State University qualified graduate programs; and

(X) University of the District of Columbia David A. Clarke School of Law.

## **(2) Qualified graduate program**

(A) For the purposes of this section, the term “qualified graduate program” means a graduate or professional program that provides a program of instruction in law or in the physical or natural sciences, engineering, mathematics, psychometrics, or other scientific discipline in which African Americans are underrepresented and has students enrolled in such program at the time of application for a grant under this section.

(B) Notwithstanding the enrollment requirement contained in subparagraph (A), an institution may use an amount equal to not more than 10 percent of the institution’s grant under this section for the development of a new qualified graduate program.

## **(3) Special rule**

Institutions that were awarded grants under this section prior to October 1, 2008, shall continue to receive such grants, subject to the availability of appropriated funds, regardless of the eligibility of the institutions described in subparagraphs (S) through (X) of paragraph (1).

## **(4) One grant per institution**

The Secretary shall not award more than 1 grant under this section in any fiscal year to any institution of higher education.

## **(5) Institutional choice**

The president or chancellor of the institution may decide which graduate or professional school or qualified graduate program will receive funds under the grant in any 1 fiscal year, if the allocation of funds among the schools or programs is delineated in the application for funds submitted to the Secretary under this section.

## **(f) Funding rule**

Subject to subsection (g) of this section, of the amount appropriated to carry out this section for any fiscal year—

(1) the first \$56,900,000 (or any lesser amount appropriated) shall be available only for the purposes of making grants to institutions or programs described in subparagraphs (A) through (R) of subsection (e)(1) of this section;

(2) any amount in excess of \$56,900,000, but not in excess of \$62,900,000, shall be available for the purpose of making grants to institutions or programs described in subparagraphs (S) through (X) of subsection (e)(1) of this section; and

(3) any amount in excess of \$62,900,000, shall be made available to each of the institutions or programs identified in subparagraphs (A) through (X)<sup>1</sup> pursuant to a formula developed by the Secretary that uses the following elements:

(A) The ability of the institution to match Federal funds with non-Federal funds.

(B) The number of students enrolled in the programs for which the eligible institution received funding under this section in the previous year.

(C) The average cost of education per student, for all full-time graduate or professional students (or the equivalent) enrolled in the eligible professional or graduate school, or for doctoral students enrolled in the qualified graduate programs.

(D) The number of students in the previous year who received their first professional or doctoral degree from the programs for which the eligible institution received funding under this section in the previous year.

(E) The contribution, on a percent basis, of the programs for which the institution is eligible to receive funds under this section to the total number of African Americans receiving graduate or professional degrees in the professions or disciplines related to the programs for the previous year.

## **(g) Hold harmless rule**

Notwithstanding paragraphs (2) and (3) of subsection (f) of this section, no institution or qualified program identified in subsection (e)(1) of this section that received a grant for fiscal year 2008 and that is eligible to receive a grant in a subsequent fiscal year shall receive a grant amount in any such subsequent fiscal year that is less than the grant amount received for fiscal year 2008, unless the amount appropriated is not sufficient to provide such grant amounts to all such institutions and programs, or the institu-

<sup>1</sup> So in original. Probably should be “subparagraphs (A) to (X) of subsection (e)(1) of this section”.

tion cannot provide sufficient matching funds to meet the requirements of this section.

**(h) Interaction with other grant programs**

No institution that is eligible for and receives an award under section 1102a, 1136a, or 1136b of this title for a fiscal year shall be eligible to apply for a grant, or receive grant funds, under this section for the same fiscal year.

(Pub. L. 89-329, title III, §326, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1297; amended Pub. L. 100-50, §2(a)(9), (10), June 3, 1987, 101 Stat. 335; Pub. L. 102-325, title III, §303(f)(1), (g), July 23, 1992, 106 Stat. 475, 476; Pub. L. 103-208, §2(a)(9), Dec. 20, 1993, 107 Stat. 2457; Pub. L. 104-141, §2, May 6, 1996, 110 Stat. 1328; Pub. L. 105-244, title III, §304(b), Oct. 7, 1998, 112 Stat. 1643; Pub. L. 110-315, title III, §311, Aug. 14, 2008, 122 Stat. 3178.)

AMENDMENTS

2008—Subsec. (b). Pub. L. 110-315, §311(a), inserted at end “Any funds awarded for such five-year grant period that are obligated during such five-year period may be expended during the 10-year period beginning on the first day of such five-year period.”

Subsec. (c)(5). Pub. L. 110-315, §311(b)(1), substituted “establishing or improving” for “establish or improve”.

Subsec. (c)(6). Pub. L. 110-315, §311(b)(2), substituted “assisting” for “assist” and struck out “and” after semicolon.

Subsec. (c)(8) to (12). Pub. L. 110-315, §311(b)(3), (4), added pars. (8) to (12).

Subsec. (e)(1). Pub. L. 110-315, §311(c)(1)(A), inserted a colon after “the following” in introductory provisions.

Subsec. (e)(1)(S) to (X). Pub. L. 110-315, §311(c)(1)(B)–(D), added subpars. (S) to (X).

Subsec. (e)(2)(A). Pub. L. 110-315, §311(c)(3), inserted “in law or” after “instruction” and substituted “mathematics, psychometrics, or” for “mathematics, or”.

Subsec. (e)(3). Pub. L. 110-315, §311(c)(2), substituted “2008” for “1998” and “subparagraphs (S) through (X)” for “subparagraphs (Q) and (R)”.

Subsec. (e)(4). Pub. L. 110-315, §311(c)(4), struck out “or university system” after “higher education”.

Subsec. (f)(1). Pub. L. 110-315, §311(d)(1), substituted “\$56,900,000” for “\$26,600,000” and “through (R)” for “through (P)”.

Subsec. (f)(2). Pub. L. 110-315, §311(d)(2), substituted “\$56,900,000, but not in excess of \$62,900,000” for “\$26,600,000, but not in excess of \$28,600,000” and “subparagraphs (S) through (X)” for “subparagraphs (Q) and (R)”.

Subsec. (f)(3). Pub. L. 110-315, §311(d)(3), in introductory provisions, substituted “\$62,900,000” for “\$28,600,000” and “through (X)” for “through (R)”.

Subsec. (g). Pub. L. 110-315, §311(e), substituted “2008” for “1998” in two places.

Subsec. (h). Pub. L. 110-315, §311(f), added subsec. (h). 1998—Subsec. (a)(1). Pub. L. 105-244, §304(b)(1)(A)(i), inserted “in mathematics, engineering, or the physical or natural sciences” after “graduate education opportunities”.

Subsec. (a)(2). Pub. L. 105-244, §304(b)(1)(A)(ii), substituted “\$1,000,000 may” for “\$500,000 may” and “, except that no institution shall be required to match any portion of the first \$1,000,000 of the institution’s award from the Secretary. After funds are made available to each eligible institution under the funding rules described in subsection (f) of this section, the Secretary shall distribute, on a pro rata basis, any amounts which were not so made available (by reason of the failure of an institution to comply with the matching requirements of this paragraph) among the institutions that have complied with such matching requirement.” for “except that the Morehouse School of Medicine shall receive at least \$3,000,000.”

Subsec. (c). Pub. L. 105-244, §304(b)(2), added pars. (1) to (7) and struck out former pars. (1) to (3) which read as follows:

“(1) any of the purposes enumerated under section 1062 of this title;

“(2) to establish or improve a development office to strengthen and increase contributions from alumni and the private sector; and

“(3) to assist in the establishment or maintenance of an institutional endowment to facilitate financial independence pursuant to section 1065 of this title.”

Subsec. (d)(2). Pub. L. 105-244, §304(b)(1)(B), substituted “\$1,000,000” for “\$500,000”.

Subsec. (e)(1). Pub. L. 105-244, §304(b)(3)(A)(i), substituted “are the following” for “include—” in introductory provisions.

Subsec. (e)(1)(E) to (J). Pub. L. 105-244, §304(b)(3)(A)(ii), inserted “and other qualified graduate programs” before semicolon at end.

Subsec. (e)(1)(P). Pub. L. 105-244, §304(b)(3)(A)(iv)(I), inserted “University” after “State”.

Subsec. (e)(1)(Q), (R). Pub. L. 105-244, §304(b)(3)(A)(iii), (iv)(II), (III), added subpars. (Q) and (R).

Subsec. (e)(2). Pub. L. 105-244, §304(b)(3)(B), added par. (2) and struck out heading and text of former par. (2). Text read as follows: “For the purposes of this section, the term ‘qualified graduate program’ means a graduate or professional program that—

“(A) provides a program of instruction in the physical or natural sciences, engineering, mathematics, or other scientific discipline in which African Americans are underrepresented; and

“(B) has students enrolled in such program at the time of application for a grant under this section.”

Subsec. (e)(3). Pub. L. 105-244, §304(b)(3)(B), added par. (3) and struck out heading and text of former par. (3). Text read as follows: “Graduate institutions that were awarded grants under this section prior to October 1, 1992 shall continue to receive such grant payments, regardless of the eligibility of the graduate institutions described in subparagraphs (F) through (P), until such grant period has expired or September 30, 1993, whichever is later.”

Subsec. (e)(5). Pub. L. 105-244, §304(b)(3)(C), added par. (5).

Subsec. (f). Pub. L. 105-244, §304(b)(4)(A), substituted “Subject to subsection (g), of the amount appropriated” for “Of the amount appropriated” in introductory provisions.

Subsec. (f)(1). Pub. L. 105-244, §304(b)(4)(B), substituted “\$26,600,000” for “\$12,000,000” and “(A) through (P)” for “(A) through (E)”.

Subsec. (f)(2), (3). Pub. L. 105-244, §304(b)(4)(C), added pars. (2) and (3) and struck out former par. (2) which read as follows: “any amount appropriated in excess of \$12,000,000 shall be available—

“(A) for the purposes of making grants, in equal amounts not to exceed \$500,000, to institutions or programs described in subparagraphs (F) through (P) of subsection (e)(1) of this section; and

“(B) secondly for the purposes of making grants to institutions or programs described in subparagraphs (A) through (P) of subsection (e)(1) of this section.”

Subsec. (g). Pub. L. 105-244, §304(b)(5), added subsec. (g).

1996—Subsec. (b). Pub. L. 104-141 struck out at end “No more than two 5-year grants (for a period of not more than 10 years) may be made to any one undergraduate or postgraduate institution.”

1993—Subsec. (e)(2). Pub. L. 103-208 redesignated subpar. (C) as (B) and struck out former subpar. (B) which read as follows: “has been accredited by a nationally recognized accrediting agency or association or has been approved by a nationally recognized approving agency; and”.

1992—Subsec. (e). Pub. L. 102-325, §303(f)(1), substituted “Eligibility” for “Eligible professional or graduate institutions” in heading and amended text generally. Prior to amendment, text read as follows: “Independent professional or graduate institutions eli-



gible for grants under subsection (a) of this section include—

- “(1) Morehouse School of Medicine;
- “(2) Meharry Medical School;
- “(3) Charles R. Drew Postgraduate Medical School;
- “(4) Atlanta University; and
- “(5) Tuskegee Institute School of Veterinary Medicine.”

Subsec. (f). Pub. L. 102-325, §303(g), added subsec. (f). 1987—Subsec. (a)(2). Pub. L. 100-50, §2(a)(9), inserted “except that the Morehouse School of Medicine shall receive at least \$3,000,000”.

Subsec. (c)(3). Pub. L. 100-50, §2(a)(10), made technical amendment to reference to section 1065 of this title to correct reference to corresponding section of original act.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

#### CONGRESSIONAL FINDINGS

Section 1 of Pub. L. 104-141 provided that: “The Congress finds the following:

- “(1) The Historically Black Graduate Professional Schools identified under section 326 of the Higher Education Act [20 U.S.C. 1063b] may receive grant funds if the Secretary of Education determines that such institutions make a substantial contribution to the legal, medical, dental, veterinary, or other graduate opportunity for African Americans.
- “(2) The health professions schools which participate under section 326 train 50 percent of the Nation’s African American physicians, 50 percent of the Nation’s African American dentists, 50 percent of the Nation’s African American pharmacists, and 75 percent of the Nation’s African American veterinarians.
- “(3) A majority of the graduates of these schools practice in poor urban and rural areas of the country providing care to many disadvantaged Americans.
- “(4) The survival of these schools will contribute to the improved health status of disadvantaged persons, and of all Americans.”

### § 1063c. Reporting and audit requirements

#### (a) Recordkeeping

Each recipient of a grant under this part shall keep such records as the Secretary shall prescribe, including records which fully disclose—

- (1) the amount and disposition by such recipient of the proceeds of such assistance;
- (2) the cost of the project or undertaking in connection with which such assistance is given or used;
- (3) the amount of that portion of the cost of the project or undertaking supplied by other sources; and

(4) such other records as will facilitate an effective audit.

#### (b) Use of unexpended funds

Any funds paid to an institution and not expended or used for the purposes for which the funds were paid during the five-year period following the date of the initial grant award, may be carried over and expended during the succeeding five-year period, if such funds were obligated for a purpose for which the funds were paid during the five-year period following the date of the initial grant award.

(Pub. L. 89-329, title III, §327, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1298; amended Pub. L. 100-50, §2(a)(11), June 3, 1987, 101 Stat. 335; Pub. L. 110-315, title III, §312, Aug. 14, 2008, 122 Stat. 3180.)

#### AMENDMENTS

2008—Subsec. (b). Pub. L. 110-315 amended subsec. (b) generally. Prior to amendment, text read as follows: “Any funds paid to an institution and not expended or used for the purposes for which the funds were paid within 10 years following the date of the initial grant awarded to an institution under part B of this subchapter shall be repaid to the Treasury of the United States.”

1987—Subsec. (a). Pub. L. 100-50 substituted “part” for “chapter” in introductory text.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

#### PART C—ENDOWMENT CHALLENGE GRANTS FOR INSTITUTIONS ELIGIBLE FOR ASSISTANCE UNDER PART A OR PART B

### § 1064. Repealed. Pub. L. 102-325, title III, § 304(a)(2), July 23, 1992, 106 Stat. 476

Section, Pub. L. 89-329, title III, §331, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1298, related to establishment of challenge grant program.

A prior section 1064, Pub. L. 89-329, title III, §331, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1395; amended Pub. L. 97-35, title V, §516(c)(2), Aug. 13, 1981, 95 Stat. 447, established a challenge grant program, prior to the general revision of this subchapter by Pub. L. 99-498.

Another prior section 1064, Pub. L. 89-329, title IV, §404, Nov. 8, 1965, 79 Stat. 1233, related to time and manner of making application for grant, selection of recipients and conditions precedent to award, prior to the general revision of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 247.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

### § 1065. Endowment challenge grants

#### (a) Purpose; definitions

(1) The purpose of this section is to establish a program to provide matching grants to eligible institutions in order to establish or increase endowment funds at such institutions, to provide additional incentives to promote fund raising activities by such institutions, and to foster increased independence and self-sufficiency at such institutions.

(2) For the purpose of this section:

(A) The term “endowment fund” means a fund established by State law, by an institution of higher education, or by a foundation which is exempt from taxation and is maintained for the purpose of generating income for the support of the institution, but which shall not include real estate.

(B) The term “endowment fund corpus” means an amount equal to the grant or grants awarded under this section plus an amount equal to such grant or grants provided by the institution.

(C) The term “endowment fund income” means an amount equal to the total value of the endowment fund established under this section minus the endowment fund corpus.

(D)(i) The term “eligible institution” means an institution that is an—

(I) eligible institution under part A of this subchapter or would be considered to be such an institution if section 1058(b)(1)(C) of this title referred to a postgraduate degree rather than a bachelor’s degree;

(II) institution eligible for assistance under part B of this subchapter or would be considered to be such an institution if section 1063 of this title referred to a postgraduate degree rather than a baccalaureate degree; or

(III) institution of higher education that makes a substantial contribution to postgraduate medical educational opportunities for minorities and the economically disadvantaged.

(ii) The Secretary may waive the requirements of subclauses (I) and (II) of clause (i) with respect to a postgraduate degree in the case of any institution otherwise eligible under clause (i) for an endowment challenge grant upon determining that the institution makes a substantial contribution to medical education opportunities for minorities and the economically disadvantaged.

**(b) Grants authorized**

(1) From sums available for this section under section 1068h of this title, the Secretary is authorized to award endowment challenge grants to eligible institutions to establish or increase an endowment fund at such institution. Such grants shall be made only to eligible institutions described in paragraph (4) whose applications have been approved pursuant to subsection (g) of this section.

(2)(A) Except as provided in subparagraph (B), no institution shall receive a grant under this section, unless such institution has deposited in its endowment fund established under this section an amount equal to the amount of such grant. The source of funds for this institutional match shall not include Federal funds or funds from an existing endowment fund.

(B) The Secretary may make a grant under this part to an eligible institution in any fiscal year if the institution—

(i) applies for a grant in an amount not exceeding \$1,000,000; and

(ii) has deposited in the eligible institution’s endowment fund established under this section an amount which is equal to  $\frac{1}{2}$  of the amount of such grant.

(C) An eligible institution of higher education that is awarded a grant under subparagraph (B) shall not be eligible to receive an additional grant under subparagraph (B) until 10 years after the date on which the grant period terminates.

(3) The period of a grant under this section shall be not more than 20 years. During the grant period, an institution may not withdraw or expend any of the endowment fund corpus. After the termination of the grant period, an institution may use the endowment fund corpus plus any endowment fund income for any educational purpose.

(4)(A) An institution of higher education is eligible to receive a grant under this section if it is an eligible institution as described in subsection (a)(2)(D) of this section.

(B) No institution shall be ineligible for an endowment challenge grant under this section for a fiscal year by reason of the previous receipt of such a grant but no institution shall be eligible to receive such a grant for more than 2 fiscal years out of any period of 5 consecutive fiscal years.

(5) An endowment challenge grant awarded under this section to an eligible institution shall be in an amount which is not less than \$100,000 in any fiscal year.

(6)(A) An eligible institution may designate a foundation, which was established for the purpose of raising money for the institution, as the recipient of the grant awarded under this section.

(B) The Secretary shall not award a grant to a foundation on behalf of an institution unless—

(i) the institution assures the Secretary that the foundation is legally authorized to receive the endowment fund corpus and is legally authorized to administer the fund in accordance with this section and any implementing regulation;

(ii) the foundation agrees to administer the fund in accordance with the requirements of this section and any implementing regulation; and

(iii) the institution agrees to be liable for any violation by the foundation of the provisions of this section and any implementing regulation, including any monetary liability that may arise as a result of such violation.

**(c) Grant agreement; endowment fund provisions**

(1) An institution awarded a grant under this section shall enter into an agreement with the Secretary containing satisfactory assurances that it will (A) immediately comply with the matching requirements of subsection (b)(2) of this section, (B) establish an endowment fund independent of any other such fund of the institution, (C) invest the endowment fund corpus, and (D) meet the other requirements of this section.

(2)(A) An institution shall invest the endowment fund corpus and endowment fund income in low-risk securities in which a regulated insurance company may invest under the law of the State in which the institution is located such as a federally insured bank savings account or comparable interest-bearing account, certificate of deposit, money market fund, mutual fund, or obligations of the United States.

(B) The institution, in investing the endowment fund established under this section, shall exercise the judgment and care, under the circumstances then prevailing, which a person of prudence, discretion, and intelligence would exercise in the management of such person's own affairs.

(3)(A) An institution may withdraw and expend the endowment fund income to defray any expenses necessary to the operation of such college, including expenses of operations and maintenance, administration, academic and support personnel, construction and renovation, community and student services programs, and technical assistance.

(B)(i) Except as provided in clause (ii), an institution may not spend more than 50 percent of the total aggregate endowment fund income earned prior to the time of expenditure.

(ii) The Secretary may permit an institution to spend more than 50 percent of the endowment fund income notwithstanding clause (i) if the institution demonstrates such an expenditure is necessary because of (I) a financial emergency, such as a pending insolvency or temporary liquidity problem; (II) a life-threatening situation occasioned by a natural disaster or arson; or (III) any other unusual occurrence or exigent circumstance.

#### **(d) Repayment provisions**

(1) If at any time an institution withdraws part of the endowment fund corpus, the institution shall repay to the Secretary an amount equal to 50 percent of the withdrawn amount, which represents the Federal share, plus income earned thereon. The Secretary may use such repaid funds to make additional challenge grants, or to increase existing endowment grants, to other eligible institutions.

(2) If an institution expends more of the endowment fund income than is permitted under subsection (c) of this section, the institution shall repay the Secretary an amount equal to 50 percent of the amount improperly expended (representing the Federal share thereof). The Secretary may use such repaid fund to make additional challenge grants, or to increase existing challenge grants, to other eligible institutions.

#### **(e) Audit information**

An institution receiving a grant under this section shall provide to the Secretary (or a designee thereof) such information (or access thereto) as may be necessary to audit or examine expenditures made from the endowment fund corpus or income in order to determine compliance with this section.

#### **(f) Selection criteria**

In selecting eligible institutions for grants under this section for any fiscal year, the Secretary shall—

(1) give priority to an applicant that is receiving assistance under part A of this subchapter or part B of this subchapter or has received a grant under part A of this subchapter or part B of this subchapter within the 5 fiscal years preceding the fiscal year in which the applicant is applying for a grant under this section;

(2) give priority to an applicant with a greater need for such a grant, based on the

current market value of the applicant's existing endowment in relation to the number of full-time equivalent students enrolled at such institution; and

(3) consider—

(A) the effort made by the applicant to build or maintain its existing endowment fund; and

(B) the degree to which an applicant proposes to match the grant with nongovernmental funds.

#### **(g) Application**

Any institution which is eligible for assistance under this section may submit to the Secretary a grant application at such time, in such form, and containing such information as the Secretary may prescribe, including a description of the long- and short-term plans for raising and using the funds under this part. Subject to the availability of appropriations to carry out this section and consistent with the requirement of subsection (f) of this section, the Secretary may approve an application for a grant if an institution, in its application, provides adequate assurances that it will comply with the requirements of this section.

#### **(h) Termination and recovery provisions**

(1) After notice and an opportunity for a hearing, the Secretary may terminate and recover a grant awarded under this section if the grantee institution—

(A) expends portions of the endowment fund corpus or expends more than the permissible amount of the endowment funds income as prescribed in subsection (c)(3) of this section;

(B) fails to invest the endowment fund in accordance with the investment standards set forth in subsection (c)(2) of this section; or

(C) fails to properly account to the Secretary concerning the investment and expenditures of the endowment funds.

(2) If the Secretary terminates a grant under paragraph (1), the grantee shall return to the Secretary an amount equal to the sum of each original grant under this section plus income earned thereon. The Secretary may use such repaid funds to make additional endowment grants, or to increase existing challenge grants, to other eligible institutions under this part.

#### **(i) Technical assistance**

The Secretary, directly or by grant or contract, may provide technical assistance to eligible institutions to prepare the institutions to qualify, apply for, and maintain a grant, under this section.

(Pub. L. 89-329, title III, § 331, formerly § 332, as added Pub. L. 99-498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1299; amended Pub. L. 100-50, § 2(a)(12), June 3, 1987, 101 Stat. 336; renumbered § 331 and amended Pub. L. 102-325, title III, § 304(a)(3), (b), July 23, 1992, 106 Stat. 476; Pub. L. 103-208, § 2(a)(8), (10), (11), Dec. 20, 1993, 107 Stat. 2457, 2458; Pub. L. 105-244, title III, § 305, Oct. 7, 1998, 112 Stat. 1646; Pub. L. 110-315, title III, § 313, Aug. 14, 2008, 122 Stat. 3180.)

#### **PRIOR PROVISIONS**

A prior section 331 of Pub. L. 89-329, title III, as added Pub. L. 99-498, title III, § 301(a), Oct. 17, 1986, 100 Stat.

1298, related to establishment of challenge grant program, was classified to section 1064 of this title prior to repeal by Pub. L. 102-325, §304(a)(2).

A prior section 1065, Pub. L. 89-329, title III, §332, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1396, related to applications for challenge grants, prior to the general revision of this subchapter by Pub. L. 99-498.

Another prior section 1065, Pub. L. 89-329, title IV, §405, Nov. 8, 1965, 79 Stat. 1234; Pub. L. 90-575, title I, §101(b)(2), Oct. 16, 1968, 82 Stat. 1017, related to allotment and reallocation of funds among the States, prior to the general revision of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 247.

A prior section 1065a, Pub. L. 89-329, title III, §333, as added Pub. L. 98-95, §2, Sept. 26, 1983, 97 Stat. 708, established program of matching grants to increase endowments at eligible institutions of higher education, prior to the general revision of this subchapter by Pub. L. 99-498.

#### AMENDMENTS

2008—Subsec. (b)(2)(B)(i). Pub. L. 110-315, §313(a)(1), substituted “\$1,000,000” for “\$500,000”.

Subsec. (b)(5). Pub. L. 110-315, §313(a)(2), substituted “\$100,000” for “\$50,000”.

Subsec. (i). Pub. L. 110-315, §313(b), added subsec. (i). 1998—Subsec. (b)(1). Pub. L. 105-244, §305(1), substituted “section 1068h” for “section 1069f”.

Subsec. (b)(2)(B), (C). Pub. L. 105-244, §305(2), added subpars. (B) and (C) and struck out former subpars. (B) and (C) which authorized Secretary to make grants under this part to eligible institutions in amounts which varied depending on amount appropriated in each fiscal year to carry out this part and limited rights of institutions to reapply for grants when amount appropriated was below specified amounts.

1993—Subsecs. (a)(2)(D), (b)(2)(B), (C), (5). Pub. L. 103-208 realigned margins and in subsec. (b)(5) substituted “An endowment” for “an endowment”.

1992—Subsec. (a)(1). Pub. L. 102-325, §304(b)(1)(A), struck out “of higher education” after “eligible institutions”.

Subsec. (a)(2)(D). Pub. L. 102-325, §304(b)(1)(B), added subpar. (D).

Subsec. (b)(1). Pub. L. 102-325, §304(b)(2), inserted “endowment” before “challenge grants” and struck out “of higher education” after “eligible institutions”.

Subsec. (b)(2)(B), (C). Pub. L. 102-325, §304(b)(3), amended subpars. (B) and (C) generally. Prior to amendment, subpars. (B) and (C) read as follows:

“(B) In any fiscal year in which the appropriations for this part exceeds \$10,000,000, the Secretary may make a grant under this part to an eligible institution of higher education if such institution—

“(i) has deposited in its endowment fund established under this section an amount which is equal to one-half of the amount of such grant; and

“(ii) applies for a grant in an amount exceeding \$1,000,000.

“(C) An eligible institution of higher education that is awarded a grant under this section shall not be eligible to reapply for a grant under this section during the 10 years immediately following the period that it received such grant.”

Subsec. (b)(4)(A). Pub. L. 102-325, §304(b)(4), substituted “subsection (a)(2)(D) of this section” for “section 1064(a)(1) of this title”.

Subsec. (b)(4)(B). Pub. L. 102-325, §304(b)(5), substituted “an endowment challenge grant” for “a challenge grant”.

Subsec. (b)(5). Pub. L. 102-325, §304(b)(6), amended par. (5) generally. Prior to amendment, par. (5) read as follows: “Except as provided in paragraph (2)(B), a challenge grant under this section to an eligible institution year shall—

“(A) not be less than \$50,000 for any fiscal year; and

“(B) not be more than (i) \$250,000 for fiscal year 1987; or (ii) \$500,000 for fiscal year 1988 or any succeeding fiscal year.”

Subsec. (f)(1). Pub. L. 102-325, §304(b)(7), amended par. (1) generally. Prior to amendment, par. (1) read as follows: “give priority to an applicant which is a recipient of a grant made under part A or B of this subchapter (or section 1069a of this title) during the academic year in which the applicant is applying for a grant under this section;”.

Subsec. (g). Pub. L. 102-325, §304(b)(8), inserted “, including a description of the long- and short-term plans for raising and using the funds under this part” before period at end of first sentence.

1987—Subsec. (f)(1). Pub. L. 100-50 inserted “(or section 1069a of this title)”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

### PART D—HISTORICALLY BLACK COLLEGE AND UNIVERSITY CAPITAL FINANCING

#### CODIFICATION

Pub. L. 105-244, title III, §301(a)(3), Oct. 7, 1998, 112 Stat. 1636, redesignated part B of subchapter VII of this chapter as part D of subchapter III of this chapter.

#### PRIOR PROVISIONS

A prior part D, consisting of sections 1066 to 1069, 1069b to 1069d, and 1069f, was redesignated part F (§1068 et seq.) of this subchapter by Pub. L. 105-244, title III, §301(a)(1), Oct. 7, 1998, 112 Stat. 1636.

### § 1066. Findings

The Congress finds that—

(1) a significant part of the Federal mission in education has been to attain equal opportunity in higher education for low-income, educationally disadvantaged Americans and African Americans;

(2) the Nation's historically Black colleges and universities have played a prominent role in American history and have an unparalleled record of fostering the development of African American youth by recognizing their potential, enhancing their academic and technical skills, and honing their social and political skills through higher education;

(3) the academic and residential facilities on the campuses of all historically Black colleges and universities have suffered from neglect, deferred maintenance and are in need of capital improvements in order to provide appropriate settings for learning and social development through higher education;

(4) due to their small enrollments, limited endowments and other financial factors nor-

mally considered by lenders in construction financing, historically Black colleges and universities often lack access to the sources of funding necessary to undertake the necessary capital improvements through borrowing and bond financing;

(5) despite their track record of long-standing and remarkable institutional longevity and viability, historically Black colleges and universities often lack the financial resources necessary to gain access to traditional sources of capital financing such as bank loans and bond financing; and

(6) Federal assistance to facilitate low-cost capital basis for historically Black colleges and universities will enable such colleges and universities to continue and expand their educational mission and enhance their significant role in American higher education.

(Pub. L. 89-329, title III, §341, formerly title VII, §721, as added Pub. L. 102-325, title VII, §704, July 23, 1992, 106 Stat. 741; renumbered title III, §341, Pub. L. 105-244, title III, §301(a)(3), (4), Oct. 7, 1998, 112 Stat. 1636.)

#### CODIFICATION

Section was formerly classified to section 1132c of this title prior to renumbering by Pub. L. 105-244.

#### PRIOR PROVISIONS

A prior section 1066, Pub. L. 89-329, title III, §351, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1302, and amended, which related to applications for assistance under this subchapter, was renumbered section 391 of Pub. L. 89-329 by Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068 of this title.

Another prior section 1066, Pub. L. 89-329, title III, §341, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1396, related to applications for assistance, prior to the general amendment of this subchapter by Pub. L. 99-498.

Another prior section 1066, Pub. L. 89-329, title IV, §406, Nov. 8, 1965, 79 Stat. 1234; Pub. L. 90-575, title I, §101(b)(2), Oct. 16, 1968, 82 Stat. 1017, related to allocation of allotted funds to institutions, filing dates for application, criteria for making allocations, additional allocations and payments, prior to the general amendment of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 247.

#### EFFECTIVE DATE

Part effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as an Effective Date of 1992 Amendment note under section 1001 of this title.

### § 1066a. Definitions

For the purposes of this part:

(1) The term “eligible institution” means a “part B institution” as that term is defined in section 1061(2) of this title.

(2) The term “loan” means a loan made to an eligible institution under the provisions of this part and pursuant to an agreement with the Secretary.

(3) The term “qualified bond” means any obligation issued by the designated bonding authority at the direction of the Secretary, the net proceeds of which are loaned to an eligible institution for the purposes described in section 1066b(b) of this title.

(4) The term “funding” means any payment under this part from the Secretary to the eli-

gible institution or its assignee in fulfillment of the insurance obligations of the Secretary pursuant to an agreement under section 1066b of this title.

(5) The term “capital project” means, subject to section 1066c(b) of this title, the repair, renovation, or, in exceptional circumstances, the construction or acquisition, of—

(A) any classroom facility, library, laboratory facility, dormitory (including dining facilities) or other facility customarily used by colleges and universities for instructional or research purposes or for housing students, faculty, and staff;

(B) a facility for the administration of an educational program, or a student center or student union, except that not more than 5 percent of the loan proceeds provided under this part may be used for the facility, center or union if the facility, center or union is owned, leased, managed, or operated by a private business, that, in return for such use, makes a payment to the eligible institution;

(C) instructional equipment, technology, research instrumentation, and any capital equipment or fixture related to facilities described in subparagraph (A);

(D) a maintenance, storage, or utility facility that is essential to the operation of a facility, a library, a dormitory, equipment, instrumentation, a fixture, real property or an interest therein, described in this paragraph;

(E) a facility designed to provide primarily outpatient health care for students or faculty;

(F) physical infrastructure essential to support the projects authorized under this paragraph, including roads, sewer and drainage systems, and water, power, lighting, telecommunications, and other utilities;

(G) any other facility, equipment or fixture which is essential to the maintaining of accreditation of the member institution by an accrediting agency or association recognized by the Secretary under subpart 2 of part G of subchapter IV; and

(H) any real property or interest therein underlying facilities described in subparagraph (A) or (G).

(6) The term “interest” includes accredited value or any other payment constituting interest on an obligation.

(7) The term “outstanding”, when used with respect to bonds, shall not include bonds the payment of which shall have been provided for by the irrevocable deposit in trust of obligations maturing as to principal and interest in such amounts and at such times as will ensure the availability of sufficient moneys to make payments on such bonds.

(8) The term “designated bonding authority” means the private, for-profit corporation selected by the Secretary pursuant to section 1066d(1) of this title for the purpose of issuing taxable capital project construction bonds in furtherance of the purposes of this part.

(9) The term “Advisory Board” means the Advisory Board established by section 1066f of this title.

(Pub. L. 89-329, title III, §342, formerly title VII, §722, as added Pub. L. 102-325, title VII, §704, July 23, 1992, 106 Stat. 742; renumbered title III, §342, and amended Pub. L. 105-244, title III, §§301(a)(3), (4), (c)(4), 306(a), Oct. 7, 1998, 112 Stat. 1636, 1637, 1646; Pub. L. 110-315, title III, §§314(a), 320(1), Aug. 14, 2008, 122 Stat. 3180, 3187.)

#### CODIFICATION

Section was formerly classified to section 1132c-1 of this title prior to renumbering by Pub. L. 105-244.

#### PRIOR PROVISIONS

A prior section 342 of Pub. L. 89-329 was classified to section 1067 of this title prior to the general amendment of this subchapter by Pub. L. 99-498.

#### AMENDMENTS

2008—Par. (5). Pub. L. 110-315, §320(1)(A), inserted a comma after “1066c(b) of this title” in introductory provisions.

Par. (5)(C). Pub. L. 110-315, §320(1)(B), substituted “equipment, technology,” for “equipment technology,.”.

Par. (5)(G). Pub. L. 110-315, §314(a)(1), substituted “by an accrediting agency or association recognized by the Secretary under subpart 2 of part G of subchapter IV” for “by a nationally recognized accrediting agency or association”.

Par. (8). Pub. L. 110-315, §314(a)(2), inserted “capital project” after “issuing taxable”.

1998—Par. (3). Pub. L. 105-244, §301(c)(4)(A), substituted “section 1066b(b)” for “section 1132c-2(b)”.

Par. (4). Pub. L. 105-244, §301(c)(4)(B), substituted “section 1066b” for “section 1132c-2”.

Par. (5). Pub. L. 105-244, §301(c)(4)(C), substituted “section 1066c(b)” for “section 1132c-3(b)” in introductory provisions.

Par. (5)(B). Pub. L. 105-244, §306(a)(2), added subpar. (B). Former subpar. (B) redesignated (C).

Par. (5)(C). Pub. L. 105-244, §306(a)(1), (3), redesignated subpar. (B) as (C) and inserted “technology,” after “instructional equipment”. Former subpar. (C) redesignated (G).

Par. (5)(D) to (F). Pub. L. 105-244, §306(a)(4), added subpars. (D) to (F). Former subpar. (D) redesignated (H).

Par. (5)(G). Pub. L. 105-244, §306(a)(1), redesignated subpar. (C) as (G).

Par. (5)(H). Pub. L. 105-244, §306(a)(1), (5), redesignated subpar. (D) as (H) and substituted “(G)” for “(C)”.

Par. (8). Pub. L. 105-244, §301(c)(4)(D), substituted “section 1066d(1)” for “section 1132c-4(1)”.

Par. (9). Pub. L. 105-244, §301(c)(4)(E), substituted “section 1066f” for “section 1132c-6”.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

### § 1066b. Federal insurance for bonds

#### (a) General rule

Subject to the limitations in section 1066c of this title, the Secretary is authorized to enter into insurance agreements to provide financial insurance to guarantee the full payment of principal and interest on qualified bonds upon the conditions set forth in subsections (b), (c) and (d) of this section.

#### (b) Responsibilities of designated bonding authority

The Secretary may not enter into an insurance agreement described in subsection (a) of

this section unless the Secretary designates a qualified bonding authority in accordance with sections 1066d(1) and 1066e<sup>1</sup> of this title and the designated bonding authority agrees in such agreement to—

(1) use the proceeds of the qualified bonds, less costs of issuance not to exceed 2 percent of the principal amount thereof, to make loans to eligible institutions or for deposit into an escrow account for repayment of the bonds;

(2) provide in each loan agreement with respect to a loan that not less than 95 percent of the proceeds of the loan will be used—

(A) to finance the repair, renovation, and, in exceptional cases, construction or acquisition, of a capital project; or

(B) to refinance an obligation the proceeds of which were used to finance the repair, renovation, and, in exceptional cases, construction or acquisition, of a capital project;

(3)(A) charge such interest on loans, and provide for such a schedule of repayments of loans, as will, upon the timely repayment of the loans, provide adequate and timely funds for the payment of principal and interest on the bonds; and

(B) require that any payment on a loan expected to be necessary to make a payment of principal and interest on the bonds be due not less than 60 days prior to the date of the payment on the bonds for which such loan payment is expected to be needed;

(4) prior to the making of any loan, provide for a credit review of the institution receiving the loan and assure the Secretary that, on the basis of such credit review, it is reasonable to anticipate that the institution receiving the loan will be able to repay the loan in a timely manner pursuant to the terms thereof;

(5) provide in each loan agreement with respect to a loan that, if a delinquency on such loan results in a funding under the insurance agreement, the institution obligated on such loan shall repay the Secretary, upon terms to be determined by the Secretary, for such funding;

(6) assign any loans to the Secretary, upon the demand of the Secretary, if a delinquency on such loan has required a funding under the insurance agreement;

(7) in the event of a delinquency on a loan, engage in such collection efforts as the Secretary shall require for a period of not less than 45 days prior to requesting a funding under the insurance agreement;

(8) establish an escrow account—

(A) into which each eligible institution shall deposit 5 percent of the proceeds of any loan made under this part, with each eligible institution required to maintain in the escrow account an amount equal to 5 percent of the outstanding principal of all loans made to such institution under this part; and

(B) the balance of which—

(i) shall be available to the Secretary to pay principal and interest on the bonds in the event of delinquency in loan repayment; and

<sup>1</sup> See References in Text note below.

(ii) shall be used to return to an eligible institution an amount equal to any remaining portion of such institution's 5 percent deposit of loan proceeds within 120 days following scheduled repayment of such institution's loan;

(9) provide in each loan agreement with respect to a loan that, if a delinquency on such loan results in amounts being withdrawn from the escrow account to pay principal and interest on bonds, subsequent payments on such loan shall be available to replenish such escrow account;

(10) comply with the limitations set forth in section 1066c of this title;

(11) make loans only to eligible institutions under this part in accordance with conditions prescribed by the Secretary to ensure that loans are fairly allocated among as many eligible institutions as possible, consistent with making loans of amounts that will permit capital projects of sufficient size and scope to significantly contribute to the educational program of the eligible institutions; and

(12) limit loan collateralization, with respect to any loan made under this part, to 100 percent of the loan amount, except as otherwise required by the Secretary.

#### (c) Additional agreement provisions

Any insurance agreement described in subsection (a) of this section shall provide as follows:

(1) The payment of principal and interest on bonds shall be insured by the Secretary until such time as such bonds have been retired or canceled.

(2) The Federal liability for delinquencies and default for bonds guaranteed under this part shall only become effective upon the exhaustion of all the funds held in the escrow account described in subsection (b)(8) of this section.

(3) The Secretary shall create a letter of credit authorizing the Department of the Treasury to disburse funds to the designated bonding authority or its assignee.

(4) The letter of credit shall be drawn upon in the amount determined by paragraph (5) of this subsection upon the certification of the designated bonding authority to the Secretary or the Secretary's designee that there is a delinquency on 1 or more loans and there are insufficient funds available from loan repayments and the escrow account to make a scheduled payment of principal and interest on the bonds.

(5) Upon receipt by the Secretary or the Secretary's designee of the certification described in paragraph (4) of this subsection, the designated bonding authority may draw a funding under the letter of credit in an amount equal to—

(A) the amount required to make the next scheduled payment of principal and interest on the bonds, less

(B) the amount available to the designated bonding authority from loan repayments and the escrow account.

(6) All funds provided under the letter of credit shall be paid to the designated bonding

authority within 2 business days following receipt of the certification described in paragraph (4).

#### (d) Full faith and credit provisions

Subject to subsection (c)(1) of this section the full faith and credit of the United States is pledged to the payment of all funds which may be required to be paid under the provisions of this section.

#### (e) Sale of qualified bonds

Notwithstanding any other provision of law, a qualified bond guaranteed under this part may be sold to any party that offers terms that the Secretary determines are in the best interest of the eligible institution.

(Pub. L. 89-329, title III, §343, formerly title VII, §723, as added Pub. L. 102-325, title VII, §704, July 23, 1992, 106 Stat. 743; amended Pub. L. 103-382, title III, §360C, Oct. 20, 1994, 108 Stat. 3972; renumbered title III, §343, and amended Pub. L. 105-244, title III, §§301(a)(3), (4), (c)(5), 306(b), Oct. 7, 1998, 112 Stat. 1636, 1637, 1646; Pub. L. 110-315, title III, §§314(b), 320(2), Aug. 14, 2008, 122 Stat. 3181, 3187.)

#### REFERENCES IN TEXT

Section 1066e of this title, referred to in subsec. (b), was repealed by Pub. L. 105-244, title III, §306(d), Oct. 7, 1998, 112 Stat. 1647.

#### CODIFICATION

Section was formerly classified to section 1132c-2 of this title prior to renumbering by Pub. L. 105-244.

#### PRIOR PROVISIONS

A prior section 343 of Pub. L. 89-329 was classified to section 1068 of this title prior to the general amendment of this subchapter by Pub. L. 99-498.

#### AMENDMENTS

2008—Subsec. (b)(8)(B)(ii). Pub. L. 110-315, §314(b)(1)(B), inserted “within 120 days” after “loan proceeds”.

Pub. L. 110-315, §314(b)(1)(A), which directed the substitution of “5” for “10”, could not be executed because “10” did not appear subsequent to amendment by Pub. L. 105-244, §306(b)(1). See 1998 Amendment note below.

Subsec. (b)(12). Pub. L. 110-315, §314(b)(2)-(4), added par. (12).

Subsec. (e). Pub. L. 110-315, §320(2), inserted heading. 1998—Subsec. (a). Pub. L. 105-244, §301(c)(5)(A), substituted “section 1066c” for “section 1132c-3”.

Subsec. (b). Pub. L. 105-244, §301(c)(5)(B)(i), substituted “sections 1066d(1) and 1066e” for “sections 1132c-4(1) and 1132c-5” in introductory provisions.

Subsec. (b)(8). Pub. L. 105-244, §306(b)(1), substituted “5 percent” for “10 percent” wherever appearing.

Subsec. (b)(10). Pub. L. 105-244, §301(c)(5)(B)(ii), substituted “section 1066c” for “section 1132c-3”.

Subsec. (d). Pub. L. 105-244, §301(c)(5)(B)(iii), made technical amendment to reference in original act which appears in text as reference to subsection (c)(1) of this section.

Subsec. (e). Pub. L. 105-244, §306(b)(2), added subsec. (e).

1994—Subsec. (b)(8)(A). Pub. L. 103-382, §360C(1)(A), inserted before semicolon “, with each eligible institution required to maintain in the escrow account an amount equal to 10 percent of the outstanding principal of all loans made to such institution under this part”.

Subsec. (b)(8)(B)(ii). Pub. L. 103-382, §360C(1)(B), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: “when all bonds under this part are retired or canceled, shall be divided among the eligible

institutions making deposits into such account on the basis of the amount of each such institution's deposit;".

Subsec. (b)(11). Pub. L. 103-382, §360C(2), substituted "conditions" for "regulations".

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

### § 1066c. Limitations on Federal insurance for bonds issued by designated bonding authority

#### (a) Limit on amount

At no time shall the aggregate principal amount of outstanding bonds insured under this part together with any accrued unpaid interest thereon exceed \$1,100,000,000, of which—

(1) not more than \$733,333,333 shall be used for loans to eligible institutions that are private historically Black colleges and universities; and

(2) not more than \$366,666,667 shall be used for loans to eligible institutions which are historically Black public colleges and universities.

For purposes of paragraphs (1) and (2), Lincoln University of Pennsylvania is an historically Black public institution. No institution of higher education that has received assistance under section 123 of this title shall be eligible to receive assistance under this part.

#### (b) Limitation on credit authority

The authority of the Secretary to issue letters of credit and insurance under this part is effective only to the extent provided in advance by appropriations Acts.

#### (c) Religious activity prohibition

No loan may be made under this part for any educational program, activity or service related to sectarian instruction or religious worship or provided by a school or department of divinity or to an institution in which a substantial portion of its functions is subsumed in a religious mission.

#### (d) Discrimination prohibition

No loan may be made to an institution under this part if the institution discriminates on account of race, color, religion, national origin, sex (to the extent provided in title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq.]), or disabling condition; except that the prohibition with respect to religion shall not apply to an institution which is controlled by or which is closely identified with the tenets of a particular religious organization if the application of this section would not be consistent with the religious tenets of such organization.

(Pub. L. 89-329, title III, §344, formerly title VII, §724, as added Pub. L. 102-325, title VII, §704, July 23, 1992, 106 Stat. 745; renumbered title III, §344, Pub. L. 105-244, title III, §301(a)(3), (4), Oct. 7, 1998, 112 Stat. 1636; Pub. L. 110-315, title III, §314(c), Aug. 14, 2008, 122 Stat. 3181.)

#### REFERENCES IN TEXT

The Education Amendments of 1972, referred to in subsec. (d), is Pub. L. 92-318, June 23, 1972, 86 Stat. 235,

as amended. Title IX of the Act, known as the Patsy Takemoto Mink Equal Opportunity in Education Act, is classified principally to chapter 38 (§1681 et seq.) of this title. For complete classification of title IX to the Code, see Short Title note set out under section 1681 of this title and Tables.

#### CODIFICATION

Section was formerly classified to section 1132c-3 of this title prior to renumbering by Pub. L. 105-244.

#### PRIOR PROVISIONS

A prior section 344 of Pub. L. 89-329 was classified to section 1069 of this title prior to the general amendment of this subchapter by Pub. L. 99-498.

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-315, §314(c)(1), substituted "\$1,100,000,000" for "\$375,000,000" in introductory provisions.

Subsec. (a)(1). Pub. L. 110-315, §314(c)(2), substituted "\$733,333,333" for "\$250,000,000".

Subsec. (a)(2). Pub. L. 110-315, §314(c)(3), substituted "\$366,666,667" for "\$125,000,000".

### § 1066d. Authority of Secretary

In the performance of, and with respect to, the functions vested in the Secretary by this part, the Secretary—

(1) shall, within 120 days of August 14, 2008, publish in the Federal Register a notice and request for proposals for any private for-profit organization or entity wishing to serve as the designated bonding authority under this part, which notice shall—

(A) specify the time and manner for submission of proposals; and

(B) specify any information, qualifications, criteria, or standards the Secretary determines to be necessary to evaluate the financial capacity and administrative capability of any applicant to carry out the responsibilities of the designated bonding authority under this part;

(2) shall ensure that—

(A) the selection process for the designated bonding authority is conducted on a competitive basis; and

(B) the evaluation and selection process is transparent;

(3) shall—

(A) review the performance of the designated bonding authority after the third year of the insurance agreement; and

(B) following the review described in subparagraph (A), implement a revised competitive selection process, if determined necessary by the Secretary in consultation with the Advisory Board established pursuant to section 1066f of this title;

(4) shall require that the first loans for capital projects authorized under section 1066b of this title be made no later than March 31, 1994;

(5) may sue and be sued in any court of record of a State having general jurisdiction or in any district court of the United States, and such district courts shall have jurisdiction of civil actions arising under this part without regard to the amount in controversy, and any action instituted under this part without regard to the amount in controversy, and any



action instituted under this section by or against the Secretary shall survive notwithstanding any change in the person occupying the office of the Secretary or any vacancy in such office;

(6)(A) may foreclose on any property and bid for and purchase at any foreclosure, or any other sale, any property in connection with which the Secretary has been assigned a loan pursuant to this part; and

(B) in the event of such an acquisition, notwithstanding any other provisions of law relating to the acquisition, handling, or disposal of real property by the United States, complete, administer, remodel and convert, dispose of, lease, and otherwise deal with, such property, except that—

(i) such action shall not preclude any other action by the Secretary to recover any deficiency in the amount of a loan assigned to the Secretary; and

(ii) any such acquisition of real property shall not deprive any State or political subdivision thereof of its civil or criminal jurisdiction in and over such property or impair the civil rights under the State or local laws of the inhabitants on such property;

(7) may sell, exchange, or lease real or personal property and securities or obligations;

(8) may include in any contract such other covenants, conditions, or provisions necessary to ensure that the purposes of this part will be achieved;

(9) may, directly or by grant or contract, provide technical assistance to eligible institutions to prepare the institutions to qualify, apply for, and maintain a capital improvement loan, including a loan under this part; and

(10) not later than 120 days after August 14, 2008, shall submit to the authorizing committees a report on the progress of the Department in implementing the recommendations made by the Government Accountability Office in October 2006 for improving the Historically Black College and Universities Capital Financing Program.

(Pub. L. 89-329, title III, § 345, formerly title VII, § 725, as added Pub. L. 102-325, title VII, § 704, July 23, 1992, 106 Stat. 745; amended Pub. L. 103-208, § 2(j)(16), Dec. 20, 1993, 107 Stat. 2481; renumbered title III, § 345, and amended Pub. L. 105-244, title III, §§ 301(a)(3), (4), (c)(6), 306(c), Oct. 7, 1998, 112 Stat. 1636, 1637, 1647; Pub. L. 110-315, title III, § 314(d), Aug. 14, 2008, 122 Stat. 3181.)

#### CODIFICATION

Section was formerly classified to section 1132c-4 of this title prior to renumbering by Pub. L. 105-244.

#### PRIOR PROVISIONS

A prior section 345 of Pub. L. 89-329 was classified to section 1069a of this title prior to the general amendment of this subchapter by Pub. L. 99-498.

#### AMENDMENTS

2008—Par. (1). Pub. L. 110-315, § 314(d)(1), substituted “August 14, 2008,” for “July 23, 1992,” in introductory provisions.

Pars. (2) to (9). Pub. L. 110-315, § 314(d)(2), (3), added pars. (2) and (3) and redesignated former pars. (2) to (7) as (4) to (9), respectively.

Par. (10). Pub. L. 110-315, § 314(d)(4)–(6), added par. (10). 1998—Par. (2). Pub. L. 105-244, § 301(c)(6), substituted “section 1066b” for “section 1132c-2”.

Par. (7). Pub. L. 105-244, § 306(c), added par. (7). 1993—Pars. (2) to (6). Pub. L. 103-208 added par. (2) and redesignated former pars. (2) to (5) as (3) to (6), respectively.

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by Pub. L. 103-208 effective as if included in the Higher Education Amendments of 1992, Pub. L. 102-325, except as otherwise provided, see section 5(a) of Pub. L. 103-208, set out as a note under section 1051 of this title.

### § 1066e. Repealed. Pub. L. 105-244, title III, § 306(d), Oct. 7, 1998, 112 Stat. 1647

Section, Pub. L. 89-329, title III, § 346, formerly title VII, § 726, as added Pub. L. 102-325, title VII, § 704, July 23, 1992, 106 Stat. 746; amended Pub. L. 103-208, § 2(j)(17), Dec. 20, 1993, 107 Stat. 2481; renumbered title III, § 346, Pub. L. 105-244, title III, § 301(a)(3), (4), Oct. 7, 1998, 112 Stat. 1636, prohibited institution receiving a loan under this part from receiving grant under former part A of subchapter VII of this chapter.

#### CODIFICATION

Section was formerly classified to section 1132c-5 of this title prior to renumbering by Pub. L. 105-244.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

### § 1066f. HBCU Capital Financing Advisory Board

#### (a) Establishment and purpose

There is established within the Department of Education, the Historically Black College and Universities Capital Financing Advisory Board (hereinafter in this part referred to as the “Advisory Board”) which shall provide advice and counsel to the Secretary and the designated bonding authority as to the most effective and efficient means of implementing construction financing on African American college campuses, and advise the Congress of the United States regarding the progress made in implementing this part. The Advisory Board shall meet with the Secretary at least twice each year to advise him as to the capital needs of historically Black colleges and universities, how those needs can be met through the program authorized by this part, and what additional steps might be taken to improve the operation and implementation of the construction financing program.

#### (b) Board membership

##### (1) Composition

The Advisory Board shall be appointed by the Secretary and shall be composed of 11 members as follows:

(A) The Secretary or the Secretary’s designee.

(B) Three members who are presidents of private historically Black colleges or universities.

(C) Three members who are presidents of public historically Black colleges or universities.

(D) The president of the United Negro College Fund, Inc., or the president's designee.

(E) The president of the National Association for Equal Opportunity in Higher Education, or the designee of the Association.

(F) The executive director of the White House Initiative on historically Black colleges and universities.

(G) The president of the Thurgood Marshall College Fund, or the designee of the president.

## (2) Terms

The term of office of each member appointed under paragraphs (1)(B) and (1)(C) shall be 3 years, except that—

(A) of the members first appointed pursuant to paragraphs (1)(B) and (1)(C), 2 shall be appointed for terms of 1 year, and 3 shall be appointed for terms of 2 years;

(B) members appointed to fill a vacancy occurring before the expiration of a term of a member shall be appointed to serve the remainder of that term; and

(C) a member may continue to serve after the expiration of a term until a successor is appointed.

## (c) Additional recommendations from Advisory Board

### (1) In general

In addition to the responsibilities of the Advisory Board described in subsection (a), the Advisory Board shall advise the Secretary and the authorizing committees regarding—

(A) the fiscal status and strategic financial condition of not less than ten historically Black colleges and universities that have—

(i) obtained construction financing through the program under this part and seek additional financing or refinancing under such program; or

(ii) applied for construction financing through the program under this part but have not received financing under such program; and

(B) the feasibility of reducing borrowing costs associated with the program under this part, including reducing interest rates.

### (2) Report

Not later than six months after August 14, 2008, the Advisory Board shall prepare and submit a report to the authorizing committees regarding the historically Black colleges and universities described in paragraph (1)(A) that includes administrative and legislative recommendations for addressing the issues related to construction financing facing such historically Black colleges and universities.

(Pub. L. 89-329, title III, §347, formerly title VII, §727, as added Pub. L. 102-325, title VII, §704, July 23, 1992, 106 Stat. 746; renumbered title III, §347, and amended Pub. L. 105-244, title III, §§301(a)(3), (4), 306(e), Oct. 7, 1998, 112 Stat. 1636, 1647; Pub. L. 110-315, title III, §314(e), Aug. 14, 2008, 122 Stat. 3182.)

## CODIFICATION

Section was formerly classified to section 1132c-6 of this title prior to renumbering by Pub. L. 105-244.

## PRIOR PROVISIONS

A prior section 347 of Pub. L. 89-329 was classified to section 1069c of this title prior to the general amendment of this subchapter by Pub. L. 99-498.

## AMENDMENTS

2008—Subsec. (b)(1). Pub. L. 110-315, §314(e)(1)(A), substituted “11 members” for “9 members” in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 110-315, §314(e)(1)(B), substituted “Three members” for “Two members”.

Subsec. (b)(1)(G). Pub. L. 110-315, §314(e)(1)(C), added subpar. (G).

Subsec. (c). Pub. L. 110-315, §314(e)(2), added subsec. (c).

1998—Subsec. (b)(1)(D). Pub. L. 105-244, §306(e)(1)(A), inserted “, or the president's designee.” after “Fund, Inc.”

Subsec. (b)(1)(E). Pub. L. 105-244, §306(e)(1)(B), inserted “, or the designee of the Association” before the period.

Subsec. (c). Pub. L. 105-244, §306(e)(2), struck out heading and text of subsec. (c). Text read as follows: “There are authorized to be appropriated \$50,000 for fiscal year 1993 and each of the 4 succeeding fiscal years to carry out this section.”

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

## TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a board established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

## § 1066g. Minority business enterprise utilization

In the performance of and with respect to the Secretary's effectuation of his responsibilities under section 1066d(1) of this title and to the maximum extent feasible in the implementation of the purposes of this part, minority business persons, including bond underwriters and credit enhancers, bond counsel, marketers, accountants, advisors, construction contractors, and managers should be utilized.

(Pub. L. 89-329, title III, §348, formerly title VII, §728, as added Pub. L. 102-325, title VII, §704, July 23, 1992, 106 Stat. 747; renumbered title III, §348, and amended Pub. L. 105-244, title III, §301(a)(3), (4), (c)(7), Oct. 7, 1998, 112 Stat. 1636, 1637.)

## CODIFICATION

Section was formerly classified to section 1132c-7 of this title prior to renumbering by Pub. L. 105-244.

## AMENDMENTS

1998—Pub. L. 105-244, §301(c)(7), substituted “section 1066d(1)” for “section 1132c-4(1)”.

## EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see sec-

tion 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

**PART E—MINORITY SCIENCE AND ENGINEERING  
IMPROVEMENT PROGRAM**

**SUBPART 1—MINORITY SCIENCE AND ENGINEERING  
IMPROVEMENT PROGRAM**

**CODIFICATION**

Pub. L. 105-244, title III, §§ 301(a)(5), 307(d), Oct. 7, 1998, 112 Stat. 1636, 1648, redesignated subpart 1 (§1135b et seq.) of part B of subchapter X of this chapter as subpart 1 of part E of subchapter III of this chapter and inserted “AND ENGINEERING” before “IMPROVEMENT PROGRAM” in heading.

**§ 1067. Findings**

Congress makes the following findings:

(1) It is incumbent on the Federal Government to support the technological and economic competitiveness of the United States by improving and expanding the scientific and technological capacity of the United States. More and better prepared scientists, engineers, and technical experts are needed to improve and expand such capacity.

(2) As the Nation's population becomes more diverse, it is important that the educational and training needs of all Americans are met. Underrepresentation of minorities in science and technological fields diminishes our Nation's competitiveness by impairing the quantity of well prepared scientists, engineers, and technical experts in these fields.

(3) Despite significant limitations in resources, minority institutions provide an important educational opportunity for minority students, particularly in science and engineering fields. Aid to minority institutions is a good way to address the underrepresentation of minorities in science and technological fields.

(4) There is a strong Federal interest in improving science and engineering programs at minority institutions as such programs lag behind in program offerings and in student enrollment compared to such programs at other institutions of higher education.

(Pub. L. 89-329, title III, §350, as added Pub. L. 105-244, title III, §307(a), Oct. 7, 1998, 112 Stat. 1647.)

**PRIOR PROVISIONS**

A prior section 1067, Pub. L. 89-329, title III, §352, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1304, and amended, which related to waiver authority and reporting requirement, was renumbered section 392 of Pub. L. 89-329 by Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068a of this title.

Another prior section 1067, Pub. L. 89-329, title III, §342, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1398, set waiver authority and reporting requirements for this part, prior to the general amendment of this subchapter by Pub. L. 99-498.

Another prior section 1067, Pub. L. 89-329, title IV, §407, Nov. 8, 1965, 79 Stat. 1234; Pub. L. 90-575, title I, §§101(b)(2), 103, 104, Oct. 16, 1968, 82 Stat. 1017, 1018, related to agreements with institutions, required provisions and use of funds as additional Federal capital contribution for student loan fund, prior to the general amendment of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 247.

**EFFECTIVE DATE**

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

**§ 1067a. Purpose; authority**

**(a) Congressional declaration of purpose**

It is the purpose of this subpart to continue the authority of the Department to operate the Minority Institutions Science Improvement Program created under section 1862(a)(1) of title 42 and transferred to the Department by section 3444(a)(1) of this title.

**(b) Grant authority**

The Secretary shall, in accordance with the provisions of this subpart, carry out a program of making grants to institutions of higher education that are designed to effect long-range improvement in science and engineering education at predominantly minority institutions and to increase the participation of underrepresented ethnic minorities, particularly minority women, in scientific and technological careers.

(Pub. L. 89-329, title III, §351, formerly title X, §1021, as added Pub. L. 99-498, title X, §1002, Oct. 17, 1986, 100 Stat. 1561; amended Pub. L. 102-325, title X, §1002(a), July 23, 1992, 106 Stat. 780; renumbered title III, §351, Pub. L. 105-244, title III, §301(a)(5), (7), Oct. 7, 1998, 112 Stat. 1636; Pub. L. 111-39, title III, §301(5), July 1, 2009, 123 Stat. 1937.)

**CODIFICATION**

Section was formerly classified to section 1135b of this title prior to renumbering by Pub. L. 105-244.

**PRIOR PROVISIONS**

A prior section 351 of Pub. L. 89-329 was renumbered section 391 and is classified to section 1068 of this title.

**AMENDMENTS**

2009—Subsec. (a). Pub. L. 111-39 made technical amendment to reference in original act which appears in text as reference to section 3444(a)(1) of this title.

1992—Subsec. (b). Pub. L. 102-325 inserted “, particularly minority women,” after “ethnic minorities”.

**EFFECTIVE DATE OF 2009 AMENDMENT**

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

**§ 1067b. Grant recipient selection**

**(a) Establishment of criteria**

Grants under this subpart shall be awarded on the basis of criteria established by the Secretary by regulations.

**(b) Priorities to be given in criteria**

In establishing criteria under subsection (a) of this section, the Secretary shall give priority to applicants which have not previously received funding from the Minority Institutions Science

Improvement Program and to previous grantees with a proven record of success, as well as to applications that contribute to achieving balance among projects with respect to geographic region, academic discipline, and project type.

**(c) Required criteria**

In establishing criteria under subsection (a) of this section, the Secretary may consider the following selection criteria in making grants:

- (1) plan of operation;
- (2) quality of key personnel;
- (3) budget and cost effectiveness;
- (4) evaluation plan;
- (5) adequacy of resources;
- (6) identification of need for the project;
- (7) potential institutional impact of the project;
- (8) institutional commitment to the project;
- (9) expected outcomes; and
- (10) scientific and educational value of the proposed project.

(Pub. L. 89-329, title III, §352, formerly title X, §1022, as added Pub. L. 99-498, title X, §1002, Oct. 17, 1986, 100 Stat. 1561; renumbered title III, §352, Pub. L. 105-244, title III, §301(a)(5), (7), Oct. 7, 1998, 112 Stat. 1636.)

**CODIFICATION**

Section was formerly classified to section 1135b-1 of this title prior to renumbering by Pub. L. 105-244.

**PRIOR PROVISIONS**

A prior section 352 of Pub. L. 89-329 was renumbered section 392 and is classified to section 1068a of this title.

**§ 1067c. Use of funds**

**(a) Types of grants**

Funds appropriated to carry out this subpart may be made available as—

- (1) institutional grants (as defined in section 1067k(6) of this title);
- (2) cooperative grants (as defined in section 1067k(7) of this title);
- (3) design projects (as defined in section 1067k(8) of this title); or
- (4) special projects (as defined in section 1067k(9) of this title).

**(b) Authorized uses for each type of grant**

(1) The authorized uses of funds made available as institutional grants include (but are not limited to)—

- (A) faculty development programs; or
- (B) development of curriculum materials.

(2) The authorized uses of funds made available as cooperative grants include (but are not limited to)—

- (A) assisting institutions in sharing facilities and personnel;
- (B) disseminating information about established programs in science and engineering;
- (C) supporting cooperative efforts to strengthen the institutions' science and engineering programs; or
- (D) carrying out a combination of any of the activities in subparagraphs (A) through (C).

(3) The authorized uses of funds made available as design projects include (but are not limited to)—

(A) developing planning, management, and evaluation systems; or

(B) developing plans for initiating scientific research and for improving institutions' capabilities for such activities.

Funds used for design project grants may not be used to pay more than 50 percent of the salaries during any academic year of faculty members involved in the project.

(4) The authorized uses of funds made available as special projects include (but are not limited to)—

- (A) advanced science seminars;
- (B) science faculty workshops and conferences;
- (C) faculty training to develop specific science research or education skills;
- (D) research in science education;
- (E) programs for visiting scientists;
- (F) preparation of films or audio-visual materials in science;
- (G) development of learning experiences in science beyond those normally available to minority undergraduate students;
- (H) development of pre-college enrichment activities in science; or
- (I) any other activities designed to address specific barriers to the entry of minorities into science.

(Pub. L. 89-329, title III, §353, formerly title X, §1023, as added Pub. L. 99-498, title X, §1002, Oct. 17, 1986, 100 Stat. 1562; renumbered title III, §353, and amended Pub. L. 105-244, title III, §301(a)(5), (7), (c)(8), Oct. 7, 1998, 112 Stat. 1636, 1637.)

**CODIFICATION**

Section was formerly classified to section 1135b-2 of this title prior to renumbering by Pub. L. 105-244.

**PRIOR PROVISIONS**

A prior section 353 of Pub. L. 89-329 was renumbered section 393 and is classified to section 1068b of this title.

**AMENDMENTS**

1998—Subsec. (a)(1). Pub. L. 105-244, §301(c)(8)(A), substituted “section 1067k(6)” for “section 1135d-5(6)”.

Subsec. (a)(2). Pub. L. 105-244, §301(c)(8)(B), substituted “section 1067k(7)” for “section 1135d-5(7)”.

Subsec. (a)(3). Pub. L. 105-244, §301(c)(8)(C), substituted “section 1067k(8)” for “section 1135d-5(8)”.

Subsec. (a)(4). Pub. L. 105-244, §301(c)(8)(D), substituted “section 1067k(9)” for “section 1135d-5(9)”.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

**§ 1067d. Repealed. Pub. L. 111-39, title III, §302, July 1, 2009, 123 Stat. 1938**

Section, Pub. L. 89-329, title III, formerly title X, §1024, as added Pub. L. 99-498, title X, §1002, Oct. 17, 1986, 100 Stat. 1562; amended Pub. L. 102-325, title X, §1002(b), July 23, 1992, 106 Stat. 780; renumbered title III, Pub. L. 105-244, title III, §301(a)(5), Oct. 7, 1998, 112 Stat. 1636, required Secretary to submit to President and Congress a report by Jan. 1, 1996, summarizing and evaluating Federal programs to increase minority participation and representation in scientific fields.

Section was formerly classified to section 1135b-3 of this title prior to renumbering by Pub. L. 105-244.

## EFFECTIVE DATE OF REPEAL

Repeal effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as an Effective Date of 2009 Amendment note under section 1001 of this title.

## SUBPART 2—PROGRAMS IN STEM FIELDS

## PRIOR PROVISIONS

A prior subpart 2, consisting of sections 1067g to 1067l, was redesignated subpart 3 of this part by Pub. L. 110-315, title III, §315(a)(1), Aug. 14, 2008, 122 Stat. 3182.

**§ 1067e. YES partnerships grant program****(a) Grant program authorized**

Subject to the availability of appropriations to carry out this subpart, the Secretary shall make grants to eligible partnerships (as described in subsection (f)) to support the engagement of underrepresented minority youth and youth who are low-income individuals (as such term is defined in section 1058 of this title) in science, technology, engineering, and mathematics through outreach and hands-on, experiential-based learning projects that encourage students in kindergarten through grade 12 who are underrepresented minority youth or low-income individuals to pursue careers in science, technology, engineering, and mathematics.

**(b) Minimum grant amount**

A grant awarded to a partnership under this subpart shall be for an amount that is not less than \$500,000.

**(c) Duration**

A grant awarded under this subpart shall be for a period of five years.

**(d) Non-Federal matching share required**

A partnership receiving a grant under this subpart shall provide, from non-Federal sources, in cash or in-kind, an amount equal to 50 percent of the costs of the project supported by such grant.

**(e) Distribution of grants**

In awarding grants under this subpart, the Secretary shall ensure that, to the maximum extent practicable, the projects funded under this subpart are located in diverse geographic regions of the United States.

**(f) Eligible partnerships**

Notwithstanding the general eligibility provision in section 1067g of this title, eligibility to receive grants under this subpart is limited to partnerships described in paragraph (5) of such section.

(Pub. L. 89-329, title III, §355, as added Pub. L. 110-315, title III, §315(a)(2), Aug. 14, 2008, 122 Stat. 3182; amended Pub. L. 111-39, title III, §301(6), July 1, 2009, 123 Stat. 1937.)

## PRIOR PROVISIONS

A prior section 355 of Pub. L. 89-329 was classified to section 1069a of this title, prior to repeal by Pub. L. 102-325.

## AMENDMENTS

2009—Subsec. (a). Pub. L. 111-39 substituted “section 1058 of this title” for “section 302”.

## EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14,

2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

**§ 1067e-1. Promotion of entry into STEM fields****(a) Authority to contract, subject to appropriations**

The Secretary is authorized to enter into a contract with a firm with a demonstrated record of success in advertising to implement a campaign to expand the population of qualified individuals in science, technology, engineering, and mathematics fields (referred to in this section as “STEM fields”) by encouraging young Americans to enter such fields.

**(b) Design of campaign**

The campaign under this section shall be designed to enhance the image of education and professions in the STEM fields and promote participation in the STEM fields, and may include—

(1) monitoring trends in youths’ attitudes toward pursuing education and professions in the STEM fields and their propensity toward entering the STEM fields;

(2) determining what factors contribute to encouraging and discouraging Americans from pursuing study in STEM fields and entering the STEM fields professionally;

(3) determining what specific factors limit the participation of groups currently underrepresented in STEM fields, including Latinos, African-Americans, and women; and

(4) drawing from the market research performed under this section and implementing an advertising campaign to encourage young Americans to take up studies in STEM fields, beginning at an early age.

**(c) Required components**

The campaign under this section shall—

(1) include components that focus tailored messages on appropriate age groups, starting with elementary school students; and

(2) link participation in the STEM fields to the concept of service to one’s country, so that young people will be encouraged to enter the STEM fields in order fulfill the obligation to be of service to their country.

**(d) Priority**

The campaign under this section shall hold as a high priority making specific appeals to Hispanic Americans, African Americans, Native Americans, students with disabilities, and women, who are currently underrepresented in the STEM fields, in order to increase their numbers in the STEM fields, and shall tailor recruitment efforts to each specific group.

**(e) Use of variety of media**

The campaign under this section shall make use of a variety of media, with an emphasis on television advertising, to reach its intended audience.

**(f) Teaching**

The campaign under this section shall include a narrowly focused effort to attract current professionals in the STEM fields, through advertising in mediums likely to reach that specific group, into teaching in a STEM field in elementary schools and secondary schools.

(Pub. L. 89-329, title III, §356, as added Pub. L. 110-315, title III, §315(a)(2), Aug. 14, 2008, 122 Stat. 3183.)

#### PRIOR PROVISIONS

A prior section 356 of Pub. L. 89-329 was renumbered section 395 and is classified to section 1068d of this title.

### § 1067e-2. Evaluation and accountability plan

The Secretary shall develop an evaluation and accountability plan for projects funded under this subpart. Such plan shall include, if the Secretary determines that it is practical, an objective measure of the impact of such projects, such as a measure of whether underrepresented minority student enrollment in courses related to science, technology, engineering, and mathematics increases at the secondary and post-secondary levels.

(Pub. L. 89-329, title III, §357, as added Pub. L. 110-315, title III, §315(a)(2), Aug. 14, 2008, 122 Stat. 3184.)

#### PRIOR PROVISIONS

A prior section 357 of Pub. L. 89-329 was renumbered section 396 and is classified to section 1068e of this title.

#### SUBPART 3—ADMINISTRATIVE AND GENERAL PROVISIONS

##### CODIFICATION

Pub. L. 110-315, title III, §315(a)(1), Aug. 14, 2008, 122 Stat. 3182, redesignated subpart 2 (§1067 et seq.) of this part as subpart 3 of this part.

Pub. L. 105-244, title III, §301(a)(5), Oct. 7, 1998, 112 Stat. 1636, redesignated subpart 3 (§1135d et seq.) of part B of subchapter X of this chapter as subpart 2 of this part.

### § 1067g. Eligibility for grants

Eligibility to receive grants under this part is limited to—

(1) public and private nonprofit institutions of higher education that—

- (A) award baccalaureate degrees; and
- (B) are minority institutions;

(2) public or private nonprofit institutions of higher education that—

- (A) award associate degrees; and
- (B) are minority institutions that—
  - (i) have a curriculum that includes science or engineering subjects; and
  - (ii) enter into a partnership with public or private nonprofit institutions of higher education that award baccalaureate degrees in science and engineering;

(3) nonprofit science-oriented organizations, professional scientific societies, and institutions of higher education that award baccalaureate degrees, that—

- (A) provide a needed service to a group of minority institutions; or
- (B) provide in-service training for project directors, scientists, and engineers from minority institutions;

(4) consortia of organizations, that provide needed services to one or more minority institutions, the membership of which may include—

(A) public and private nonprofit institutions of higher education which have a curriculum in science or engineering;

(B) institutions of higher education that have a graduate or professional program in science or engineering;

(C) research laboratories of, or under contract with, the Department of Energy, the Department of Defense, or the National Institutes of Health;

(D) relevant offices of the National Aeronautics and Space Administration, National Oceanic and Atmospheric Administration, National Science Foundation, and National Institute of Standards and Technology;

(E) quasi-governmental entities that have a significant scientific or engineering mission; or

(F) institutions of higher education that have State-sponsored centers for research in science, technology, engineering, and mathematics; or

(5) only with respect to grants under subpart 2, partnerships of organizations, the membership of which shall include—

(A) at least one institution of higher education eligible for assistance under this subchapter or subchapter V;

(B) at least one high-need local educational agency (as defined in section 1021 of this title); and

(C) at least two community organizations or entities, such as businesses, professional associations, community-based organizations, philanthropic organizations, or State agencies.

(Pub. L. 89-329, title III, §361, formerly title X, §1041, as added Pub. L. 99-498, title X, §1002, Oct. 17, 1986, 100 Stat. 1564; renumbered title III, §361, and amended Pub. L. 105-244, title III, §§301(a)(5), (7), (b), (c)(9), 307(b), Oct. 7, 1998, 112 Stat. 1636, 1637, 1648; Pub. L. 110-315, title III, §315(b), Aug. 14, 2008, 122 Stat. 3184.)

#### CODIFICATION

Section was formerly classified to section 1135d of this title prior to renumbering by Pub. L. 105-244.

#### AMENDMENTS

2008—Par. (3)(B). Pub. L. 110-315, §315(b)(1), struck out “or” at end.

Par. (4)(A). Pub. L. 110-315, §315(b)(2)(A), substituted “public and private nonprofit institutions of higher education” for “institutions of higher education”.

Par. (4)(C). Pub. L. 110-315, §315(b)(2)(B), inserted “, the Department of Defense, or the National Institutes of Health” before the semicolon.

Par. (4)(D). Pub. L. 110-315, §315(b)(2)(C), added subpar. (D) and struck out former subpar. (D) which read as follows: “private organizations that have science or engineering facilities; or”.

Par. (4)(F). Pub. L. 110-315, §315(b)(2)(D), (E), added subpar. (F).

Par. (5). Pub. L. 110-315, §315(b)(3), added par. (5).

1998—Pub. L. 105-244, §307(b), amended section catchline and text generally. Prior to amendment, text read as follows: “Eligibility to receive grants under this part is limited to—

“(1) public and private nonprofit institutions that are minority institutions (as defined in section 1067k(3) of this title); and

“(2) nonprofit science-oriented organizations, professional scientific societies, and all nonprofit, ac-

credited colleges and universities which provide a needed service to a group of eligible minority institutions or which provide in-service training for project directors, scientists, and engineers from eligible minority institutions.”

Par. (1). Pub. L. 105-244, §301(c)(9), substituted “section 1067k(3)” for “section 1135d-5(3)”.

Pub. L. 105-244, §301(b)(1), inserted “and” after the semicolon.

Par. (2). Pub. L. 105-244, §301(b)(2), substituted a period for “; and”.

Par. (3). Pub. L. 105-244, §301(b)(3), struck out par. (3) which read as follows: “for the purposes of section 1135c-1 of this title, public and private nonprofit institutions that have at least 10 percent minority enrollment.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

### § 1067h. Grant application

#### (a) Submission and contents of applications

An eligible applicant (as determined under section 1067g of this title) that desires to receive a grant under this part shall submit to the Secretary an application therefor at such time or times, in such manner, and containing such information as the Secretary may prescribe by regulation. Such application shall set forth—

(1) a program of activities for carrying out one or more of the purposes described in section 1067a(b) of this title in such detail as will enable the Secretary to determine the degree to which such program will accomplish such purpose or purposes; and

(2) such other policies, procedures, and assurances as the Secretary may require by regulation.

#### (b) Approval based on likelihood of progress

The Secretary shall approve an application only if the Secretary determines that the application sets forth a program of activities which are likely to make substantial progress toward achieving the purposes of this part.

(Pub. L. 89-329, title III, §362, formerly title X, §1042, as added Pub. L. 99-498, title X, §1002, Oct. 17, 1986, 100 Stat. 1564; renumbered title III, §362, and amended Pub. L. 105-244, title III, §301(a)(5), (7), (c)(10), Oct. 7, 1998, 112 Stat. 1636, 1637.)

#### CODIFICATION

Section was formerly classified to section 1135d-1 of this title prior to renumbering by Pub. L. 105-244.

#### AMENDMENTS

1998—Subsec. (a). Pub. L. 105-244, §301(c)(10), substituted “section 1067g” for “section 1135d” in introductory provisions and “section 1067a(b)” for “section 1135b(b)” in par. (1).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

### § 1067i. Cross program and cross agency cooperation

The Minority Science and Engineering Improvement Programs shall cooperate and con-

sult with other programs within the Department and within Federal, State, and private agencies which carry out programs to improve the quality of science, mathematics, and engineering education.

(Pub. L. 89-329, title III, §363, formerly title X, §1043, as added Pub. L. 99-498, title X, §1002, Oct. 17, 1986, 100 Stat. 1564; amended Pub. L. 102-325, title X, §1002(d), July 23, 1992, 106 Stat. 780; renumbered title III, §363, Pub. L. 105-244, title III, §301(a)(5), (7), Oct. 7, 1998, 112 Stat. 1636.)

#### CODIFICATION

Section was formerly classified to section 1135d-2 of this title prior to renumbering by Pub. L. 105-244.

#### AMENDMENTS

1992—Pub. L. 102-325 inserted “and consult” after “cooperate”.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

### § 1067j. Administrative provisions

#### (a) Technical staff

The Secretary shall appoint, without regard to the provisions of title 5 governing appointments in the competitive service, not less than 2 technical employees with appropriate scientific and educational background to administer the programs under this part who may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

#### (b) Procedures for grant review

The Secretary shall establish procedures for reviewing and evaluating grants and contracts made or entered into under such programs. Procedures for reviewing grant applications, based on the peer review system, or contracts for financial assistance under this subchapter may not be subject to any review outside of officials responsible for the administration of the Minority Science and Engineering Improvement Programs.

(Pub. L. 89-329, title III, §364, formerly title X, §1044, as added Pub. L. 99-498, title X, §1002, Oct. 17, 1986, 100 Stat. 1564; renumbered title III, §364, Pub. L. 105-244, title III, §301(a)(5), (7), Oct. 7, 1998, 112 Stat. 1636.)

#### CODIFICATION

Section was formerly classified to section 1135d-3 of this title prior to renumbering by Pub. L. 105-244.

### § 1067k. Definitions

For the purpose of this part—

(1) The term “accredited” means currently certified by a nationally recognized accrediting agency or making satisfactory progress toward achieving accreditation.

(2) The term “minority” means American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering.

(3) The term “minority institution” means an institution of higher education whose enrollment of a single minority or a combination of minorities (as defined in paragraph (2)) exceeds 50 percent of the total enrollment. The Secretary shall verify this information from the data on enrollments in the higher education general information surveys (HEGIS) furnished by the institution to the Office for Civil Rights, Department of Education.

(4) The term “science” means, for the purpose of this program, the biological, engineering, mathematical, physical, behavioral, and social sciences, and history and philosophy of science; also included are interdisciplinary fields which are comprised of overlapping areas among two or more sciences.

(5) The term “underrepresented in science and engineering” means a minority group whose number of scientists and engineers per 10,000 population of that group is substantially below the comparable figure for scientists and engineers who are white and not of Hispanic origin.

(6) The term “institutional grant” means a grant that supports the implementation of a comprehensive science improvement plan, which may include any combination of activities for improving the preparation of minority students for careers in science.

(7) The term “cooperative grant” means a grant that assists groups of nonprofit accredited colleges and universities to work together to conduct a science improvement program.

(8) The term “design projects” means projects that assist minority institutions that do not have their own appropriate resources or personnel to plan and develop long-range science improvement programs.

(9) The term “special projects” means—

(A) a special project grant to a minority institution which supports activities that—

(i) improve the quality of training in science and engineering at minority institutions; or

(ii) enhance the minority institutions’ general scientific research capabilities; or

(B) a special project grant to any eligible applicant which supports activities that—

(i) provide a needed service to a group of eligible minority institutions; or

(ii) provide in-service training for project directors, scientists, and engineers from eligible minority institutions.

(Pub. L. 89–329, title III, §365, formerly title X, §1046, as added Pub. L. 99–498, title X, §1002, Oct. 17, 1986, 100 Stat. 1566; renumbered title III, §365, and amended Pub. L. 105–244, title III, §§301(a)(5), (7), 307(c), Oct. 7, 1998, 112 Stat. 1636, 1648; Pub. L. 110–315, title III, §320(3), Aug. 14, 2008, 122 Stat. 3187.)

#### CODIFICATION

Section was formerly classified to section 1135d–5 of this title prior to renumbering by Pub. L. 105–244.

#### AMENDMENTS

2008—Par. (9)(A). Pub. L. 110–315 substituted “supports” for “support” in introductory provisions.

1998—Par. (4). Pub. L. 105–244, §307(c), inserted “behavioral,” after “physical.”

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of this title.

#### § 1067l. Repealed. Pub. L. 105–244, title III, § 301(a)(8), Oct. 7, 1998, 112 Stat. 1636

Section, Pub. L. 89–329, title III, §366, formerly title X, §1047, as added Pub. L. 99–498, title X, §1002, Oct. 17, 1986, 100 Stat. 1567; amended Pub. L. 100–418, title VI, §6221, Aug. 23, 1988, 102 Stat. 1518; Pub. L. 102–325, title X, §1002(f), July 23, 1992, 106 Stat. 780; renumbered title III, §366, Pub. L. 105–244, title III, §301(a)(5), (7), Oct. 7, 1998, 112 Stat. 1636, authorized appropriations to carry out Fund for Improvement of Postsecondary Education program.

#### CODIFICATION

Section was formerly classified to section 1135d–6 of this title prior to renumbering by Pub. L. 105–244.

#### EFFECTIVE DATE OF REPEAL

Repeal effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

#### PART F—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES AND OTHER MINORITY-SERVING INSTITUTIONS

#### CODIFICATION

Part F of title III of Pub. L. 89–329, comprising this part, was originally added as part J of title IV of Pub. L. 89–329 by Pub. L. 110–84, title VIII, §802, Sept. 27, 2007, 121 Stat. 817, and was classified to part I (§1099e) of subchapter IV of this chapter. Part J of title IV of Pub. L. 89–329 was subsequently redesignated part F of title III of Pub. L. 89–329 by Pub. L. 110–315, title III, §316(a)(2), Aug. 14, 2008, 122 Stat. 3185, and transferred to this part.

#### PRIOR PROVISIONS

A prior part F [§1068 et seq.] of this subchapter was redesignated part G by Pub. L. 110–315, title III, §316(a)(1), Aug. 14, 2008, 122 Stat. 3185.

#### § 1067q. Investment in historically Black colleges and universities and other minority-serving institutions

##### (a) Eligible institution

An institution of higher education is eligible to receive funds from the amounts made available under this section if such institution is—

(1) a part B institution (as defined in section 1061 of this title);

(2) a Hispanic-serving institution (as defined in section 1101a of this title);

(3) a Tribal College or University (as defined in section 1059c of this title);

(4) an Alaska Native-serving institution or a Native Hawaiian-serving institution (as defined in section 1059d(b) of this title);

(5) a Predominantly Black Institution (as defined in subsection (c));

(6) an Asian American and Native American Pacific Islander-serving institution (as defined in subsection (c)); or

(7) a Native American-serving nontribal institution (as defined in subsection (c)).

##### (b) New investment of funds

###### (1) In general

###### (A) Provision of funds

There shall be available to the Secretary to carry out this section, from funds in the



Treasury not otherwise appropriated, \$255,000,000 for each of the fiscal years 2008 through 2019. The authority to award grants under this section shall expire at the end of fiscal year 2019.

**(B) Availability**

Funds made available under subparagraph (A) for a fiscal year shall remain available for the next succeeding fiscal year.

**(2) Allocation and allotment**

**(A) In general**

Of the amounts made available under paragraph (1) for each fiscal year—

- (i) \$100,000,000 shall be available for allocation under subparagraph (B);
- (ii) \$100,000,000 shall be available for allocation under subparagraph (C); and
- (iii) \$55,000,000 shall be available for allocation under subparagraph (D).

**(B) HSI STEM and articulation programs**

The amount made available for allocation under this subparagraph by subparagraph (A)(i) for any fiscal year shall be available for Hispanic-serving Institutions<sup>1</sup> for activities described in section 1101b of this title, with a priority given to applications that propose—

- (i) to increase the number of Hispanic and other low income students attaining degrees in the fields of science, technology, engineering, or mathematics; and
- (ii) to develop model transfer and articulation agreements between 2-year Hispanic-serving institutions and 4-year institutions in such fields.

**(C) Allocation and allotment HBCUS and PBIS**

From the amount made available for allocation under this subparagraph by subparagraph (A)(ii) for any fiscal year—

- (i) 85 percent shall be available to eligible institutions described in subsection (a)(1) and shall be made available as grants under section 1062 of this title and allotted among such institutions under section 1063 of this title, treating such amount, plus the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out part B of this subchapter, as the amount appropriated to carry out part B of this subchapter for purposes of allotments under section 1063 of this title, for use by such institutions with a priority for—

(I) activities described in paragraphs (1), (2), (4), (5), and (10) of section 1062(a) of this title; and

(II) other activities, consistent with the institution's comprehensive plan and designed to increase the institution's capacity to prepare students for careers in the physical or natural sciences, mathematics, computer science or information technology or sciences, engineering, language instruction in the less-commonly taught languages or international af-

fairs, or nursing or allied health professions; and

(ii) 15 percent shall be available to eligible institutions described in subsection (a)(5) and shall be available for a competitive grant program to award 25 grants of \$600,000 annually for programs in any of the following areas:

- (I) science, technology, engineering, or mathematics (STEM);
- (II) health education;
- (III) internationalization or globalization;
- (IV) teacher preparation; or
- (V) improving educational outcomes of African American males.

**(D) Allocation and allotment to other minority-serving institutions**

From the amount made available for allocation under this subparagraph by subparagraph (A)(iii) for any fiscal year—

(i) \$30,000,000 for such fiscal year shall be available to eligible institutions described in subsection (a)(3) and shall be made available as grants under section 1059c of this title, treating such \$30,000,000 as part of the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out such section, and using such \$30,000,000 for purposes described in subsection (c) of such section;

(ii) \$15,000,000 for such fiscal year shall be available to eligible institutions described in subsection (a)(4) and shall be made available as grants under section 1059d of this title, treating such \$15,000,000 as part of the amount appropriated for such fiscal year in a regular or supplemental appropriation Act to carry out such section and using such \$15,000,000 for purposes described in subsection (c) of such section;

(iii) \$5,000,000 for such fiscal year shall be available to eligible institutions described in subsection (a)(6) for activities described in section 1057(c) of this title; and

(iv) \$5,000,000 for such fiscal year shall be available to eligible institutions described in subsection (a)(7)—

(I) to plan, develop, undertake, and carry out activities to improve and expand such institutions' capacity to serve Native Americans, which may include—

(aa) the purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes;

(bb) renovation and improvement in classroom, library, laboratory, and other instructional facilities;

(cc) support of faculty exchanges, faculty development, and faculty fellowships to assist faculty in attaining advanced degrees in the faculty's field of instruction;

(dd) curriculum development and academic instruction;

(ee) the purchase of library books, periodicals, microfilm, and other educational materials;

<sup>1</sup> So in original. Probably should not be capitalized.

(ff) funds and administrative management, and acquisition of equipment for use in strengthening funds management;

(gg) the joint use of facilities such as laboratories and libraries; and

(hh) academic tutoring and counseling programs and student support services; and

(II) to which the Secretary, to the extent possible and consistent with a competitive process under which such grants are awarded, allocates funds under this clause to ensure maximum and equitable distribution among all such eligible institutions.

### (c) Definitions

#### (1) Asian American

The term “Asian American” has the meaning given the term “Asian” in the Office of Management and Budget’s Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity as published on October 30, 1997 (62 Fed. Reg. 58789).

#### (2) Asian American and Native American Pacific Islander-serving institution

The term “Asian American and Native American Pacific Islander-serving institution” means an institution of higher education that—

(A) is an eligible institution under section 1058(b) of this title; and

(B) at the time of application, has an enrollment of undergraduate students that is at least 10 percent Asian American and Native American Pacific Islander students.

#### (3) Enrollment of needy students

The term “enrollment of needy students” means the enrollment at an institution of higher education with respect to which not less than 50 percent of the undergraduate students enrolled in an academic program leading to a degree—

(A) in the second fiscal year preceding the fiscal year for which the determination is made, were Federal Pell Grant recipients for such year;

(B) come from families that receive benefits under a means-tested Federal benefit program (as defined in paragraph (5));

(C) attended a public or nonprofit private secondary school—

(i) that is in the school district of a local educational agency that was eligible for assistance under part A of title I of the Elementary and Secondary Education Act of 1965 [20 U.S.C. 6311 et seq.] for any year during which the student attended such secondary school; and

(ii) which for the purpose of this paragraph and for that year was determined by the Secretary (pursuant to regulations and after consultation with the State educational agency of the State in which the school is located) to be a school in which the enrollment of children counted under a measure of poverty described in section 1113(a)(5) of such Act [20 U.S.C. 6313(a)(5)]

exceeds 30 percent of the total enrollment of such school; or

(D) are first-generation college students (as that term is defined in section 1070a–11(h) of this title), and a majority of such first-generation college students are low-income individuals.

#### (4) Low-income individual

The term “low-income individual” has the meaning given such term in section 1070a–11(h) of this title.

#### (5) Means-tested Federal benefit program

The term “means-tested Federal benefit program” means a program of the Federal Government, other than a program under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, in which eligibility for the programs’ benefits or the amount of such benefits are determined on the basis of income or resources of the individual or family seeking the benefit.

#### (6) Native American

The term “Native American” means an individual who is of a tribe, people, or culture that is indigenous to the United States.

#### (7) Native American Pacific Islander

The term “Native American Pacific Islander” means any descendant of the aboriginal people of any island in the Pacific Ocean that is a territory or possession of the United States.

#### (8) Native American-serving nontribal institution

The term “Native American-serving nontribal institution” means an institution of higher education that—

(A) at the time of application—

(i) has an enrollment of undergraduate students that is not less than 10 percent Native American students; and

(ii) is not a Tribal College or University (as defined in section 1059c of this title); and

(B) submits to the Secretary such enrollment data as may be necessary to demonstrate that the institution is described in subparagraph (A), along with such other information and data as the Secretary may by regulation require.

#### (9) Predominantly Black institution

The term “Predominantly Black institution” means an institution of higher education that—

(A) has an enrollment of needy students as defined by paragraph (3);

(B) has an average educational and general expenditure which is low, per full-time equivalent undergraduate student in comparison with the average educational and general expenditure per full-time equivalent undergraduate student of institutions of higher education that offer similar instruction, except that the Secretary may apply the waiver requirements described in section 1068a(b) of this title to this subparagraph in the same manner as the Secretary applies

the waiver requirements to section 1058(b)(1)(B) of this title;

(C) has an enrollment of undergraduate students—

(i) that is at least 40 percent Black American students;

(ii) that is at least 1,000 undergraduate students;

(iii) of which not less than 50 percent of the undergraduate students enrolled at the institution are low-income individuals or first-generation college students (as that term is defined in section 1070a–11(h) of this title); and

(iv) of which not less than 50 percent of the undergraduate students are enrolled in an educational program leading to a bachelor's or associate's degree that the institution is licensed to award by the State in which the institution is located;

(D) is legally authorized to provide, and provides within the State, an educational program for which the institution of higher education awards a bachelor's degree, or in the case of a junior or community college, an associate's degree;

(E) is accredited by a nationally recognized accrediting agency or association determined by the Secretary to be a reliable authority as to the quality of training offered, or is, according to such an agency or association, making reasonable progress toward accreditation; and

(F) is not receiving assistance under—

(i) part B;

(ii) part A of subchapter V; or

(iii) an annual authorization of appropriations under the Act of March 2, 1867 (14 Stat. 438; 20 U.S.C. 123).

(Pub. L. 89–329, title III, §371, formerly title IV, §499A, as added Pub. L. 110–84, title VIII, §802, Sept. 27, 2007, 121 Stat. 817; renumbered title III, §371, and amended Pub. L. 110–315, title III, §316(a)(3), (b), (c), Aug. 14, 2008, 122 Stat. 3185; Pub. L. 111–39, title III, §301(7), July 1, 2009, 123 Stat. 1937; Pub. L. 111–152, title II, §2103, Mar. 30, 2010, 124 Stat. 1074.)

#### REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in subsec. (c)(3)(C)(i), is Pub. L. 89–10, Apr. 11, 1965, 79 Stat. 27. Part A of title I of the Act is classified generally to part A (§6311 et seq.) of subchapter I of chapter 70 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6301 of this title and Tables.

The Act of March 2, 1867, referred to in subsec. (c)(9)(F)(iii), is act Mar. 2, 1867, ch. 162, 14 Stat. 438. Provisions relating to authorization of appropriations are contained in section 8 of the Act, which is classified to section 123 of this title. For complete classification of this Act to the Code, see Tables.

#### CODIFICATION

Section was formerly classified to section 1099e of this title prior to renumbering by Pub. L. 110–315.

#### AMENDMENTS

2010—Subsec. (b)(1)(A). Pub. L. 111–152 substituted “through 2019. The authority to award grants under this section shall expire at the end of fiscal year 2019.” for “and 2009. The authority to award grants under this section shall expire at the end of fiscal year 2009.”

2009—Subsec. (c)(3)(D), (4), (9)(C)(iii). Pub. L. 111–39, §301(7)(A)–(C)(i), substituted “1070a–11(h)” for “1070a–11(g)”.

Subsec. (c)(9)(F). Pub. L. 111–39, §301(7)(C)(ii), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: “is not receiving assistance under part B of this subchapter.”

2008—Subsec. (b)(1). Pub. L. 110–315, §316(c), amended par. (1) generally. Prior to amendment, text read as follows: “There shall be available to the Secretary to carry out this section, from funds not otherwise appropriated, \$255,000,000 for each of the fiscal years 2008 and 2009. The authority to award grants under this section shall expire at the end of fiscal year 2009.”

Subsec. (b)(2)(C)(i). Pub. L. 110–315, §316(b)(1), substituted “this subchapter” for “subchapter III” in two places.

Subsec. (c)(9)(F). Pub. L. 110–315, §316(b)(2), substituted “this subchapter” for “subchapter III”.

#### EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111–39 effective as if enacted on the date of enactment of Pub. L. 110–315 (Aug. 14, 2008), see section 3 of Pub. L. 111–39, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE

Section effective Oct. 1, 2007, see section 1(c) of Pub. L. 110–84, set out as an Effective Date of 2007 Amendment note under section 1070a of this title.

### PART G—GENERAL PROVISIONS

#### CODIFICATION

Pub. L. 110–315, title III, §316(a)(1), Aug. 14, 2008, 122 Stat. 3185, redesignated part F (§1068 et seq.) of this subchapter as part G of this subchapter.

## § 1068. Applications for assistance

### (a) Applications

#### (1) Applications required

Any institution which is eligible for assistance under this subchapter shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate the institution's need for the assistance. Subject to the availability of appropriations to carry out this subchapter, the Secretary may approve an application for assistance under this subchapter only if the Secretary determines that—

(A) the application meets the requirements of subsection (b) of this section;

(B) the applicant is eligible for assistance in accordance with the part of this subchapter under which the assistance is sought; and

(C) the applicant's performance goals are sufficiently rigorous as to meet the purposes of this subchapter and the performance objectives and indicators for this subchapter established by the Secretary pursuant to the Government Performance and Results Act of 1993 and the amendments made by such Act.

#### (2) Preliminary applications

In carrying out paragraph (1), the Secretary may develop a preliminary application for use by eligible institutions applying under part A of this subchapter prior to the submission of the principal application.

### (b) Contents

An institution, in its application for a grant, shall—

(1) set forth, or describe how the institution (other than an institution applying under part C, D or E of this subchapter) will develop, a comprehensive development plan to strengthen the institution's academic quality and institutional management, and otherwise provide for institutional self-sufficiency and growth (including measurable objectives for the institution and the Secretary to use in monitoring the effectiveness of activities under this subchapter);

(2) set forth policies and procedures to ensure that Federal funds made available under this subchapter for any fiscal year will be used to supplement and, to the extent practical, increase the funds that would otherwise be made available for the purposes of section 1057(b) or 1062 of this title, and in no case supplant those funds;

(3) set forth policies and procedures for evaluating the effectiveness in accomplishing the purpose of the activities for which a grant is sought under this subchapter;

(4) provide for such fiscal control and fund accounting procedures as may be necessary to ensure proper disbursement of and accounting for funds made available to the applicant under this subchapter;

(5) provide (A) for making such reports, in such form and containing such information, as the Secretary may require to carry out the functions under this subchapter, including not less than one report annually setting forth the institution's progress toward achieving the objectives for which the funds were awarded, and (B) for keeping such records and affording such access thereto, as the Secretary may find necessary to assure the correctness and verification of such reports;

(6) provide that the institution will comply with the limitations set forth in section 1068e of this title, except that for purposes of section 1059c of this title, paragraphs (2) and (3) of section 1068e of this title shall not apply;

(7) describe in a comprehensive manner any proposed project for which funds are sought under the application and include—

(A) a description of the various components of the proposed project, including the estimated time required to complete each such component;

(B) in the case of any development project which consists of several components (as described by the applicant pursuant to subparagraph (A)), a statement identifying those components which, if separately funded, would be sound investments of Federal funds and those components which would be sound investments of Federal funds only if funded under this subchapter in conjunction with other parts of the development project (as specified by the applicant);

(C) an evaluation by the applicant of the priority given any proposed project for which funds are sought in relation to any other projects for which funds are sought by the applicant under this subchapter, and a similar evaluation regarding priorities among the components of any single proposed project (as described by the applicant pursuant to subparagraph (A));

(D) a detailed budget showing the manner in which funds for any proposed project would be spent by the applicant; and

(E) a detailed description of any activity which involves the expenditure of more than \$25,000, as identified in the budget referred to in subparagraph (D); and

(8) include such other information as the Secretary may prescribe.

#### **(c) Priority criteria publication required**

The Secretary shall publish in the Federal Register, pursuant to chapter 5 of title 5, all policies and procedures required to exercise the authority set forth in subsection (a) of this section. No other criteria, policies, or procedures shall apply.

#### **(d) Eligibility data**

The Secretary shall use the most recent and relevant data concerning the number and percentage of students receiving need-based assistance under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 in making eligibility determinations under section 1058 of this title and shall advance the base-year forward following each annual grant cycle.

#### **(e) Technical assistance**

The Secretary, directly or by grant or contract, may provide technical assistance to eligible institutions to prepare the institutions to qualify, apply for, and maintain a grant, under this subchapter.

(Pub. L. 89-329, title III, §391, formerly §351, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1302; amended Pub. L. 100-50, §2(a)(13), June 3, 1987, 101 Stat. 336; Pub. L. 102-325, title III, §305(a), July 23, 1992, 106 Stat. 478; renumbered §391 and amended Pub. L. 105-244, title III, §§301(a)(2), (c)(11), 308(a)-(c), Oct. 7, 1998, 112 Stat. 1636, 1637, 1648, 1649; Pub. L. 110-315, title III, §§317, 320(4), Aug. 14, 2008, 122 Stat. 3185, 3188.)

#### **REFERENCES IN TEXT**

The Government Performance and Results Act of 1993, referred to in subsec. (a)(1)(C), is Pub. L. 103-62, Aug. 3, 1993, 107 Stat. 285, which enacted section 306 of Title 5, Government Organization and Employees, sections 1115 to 1119, 9703, and 9704 of Title 31, Money and Finance, and sections 2801 to 2805 of Title 39, Postal Service, amended section 1105 of Title 31, and enacted provisions set out as notes under sections 1101 and 1115 of Title 31. For complete classification of this Act to the Code, see Short Title of 1993 Amendment note set out under section 1101 of Title 31 and Tables.

#### **CODIFICATION**

Section was formerly classified to section 1066 of this title prior to renumbering by Pub. L. 105-244.

#### **PRIOR PROVISIONS**

A prior section 1068, Pub. L. 89-329, title III, §353, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1305, which related to application review process, was renumbered section 393 of Pub. L. 89-329 by Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068b of this title.

Another prior section 1068, Pub. L. 89-329, title III, §343, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1398, related to application review process and provided for reader panels, recommendation of such panels, and notification to institutions, prior to the

general amendment of this subchapter by Pub. L. 99-498.

Another prior section 1068, Pub. L. 89-329, title IV, § 408, Nov. 8, 1965, 79 Stat. 1235; Pub. L. 90-575, title I, § 105(a), Oct. 16, 1968, 82 Stat. 1018; Pub. L. 91-230, title VIII, § 801, Apr. 13, 1970, 84 Stat. 190; Pub. L. 92-318, title I, § 131(a)(1)(B), June 23, 1972, 86 Stat. 247, related to programs for identifying qualified low-income students and preparing them for post secondary education, grants or contracts for planning, developing or carrying out programs, "Talent Search" program, "Upward Bound" program, "Special Services for Disadvantaged Students" program, nature of programs, waiver of matching requirement in the "Upward Bound" program and authorization of appropriations, prior to the general amendment of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, § 131(b)(1), June 23, 1972, 86 Stat. 247.

#### AMENDMENTS

2008—Subsec. (b)(7)(E). Pub. L. 110-315, § 320(4), substituted "subparagraph (D)" for "subparagraph (E)".

Subsec. (e). Pub. L. 110-315, § 317, added subsec. (e).

1998—Subsec. (a). Pub. L. 105-244, § 308(a), amended heading and text of subsec. (a) generally. Prior to amendment, text read as follows: "Any institution which is eligible for assistance under this subchapter shall submit to the Secretary an application for assistance at such time, in such form, and containing such information, as may be necessary to enable the Secretary to evaluate its need for assistance. Subject to the availability of appropriations to carry out this subchapter, the Secretary may approve an application for a grant under this subchapter if the application meets the requirements of subsection (b) of this section and shows that the applicant is eligible for assistance in accordance with the part of this subchapter under which the assistance is sought."

Subsec. (b)(1). Pub. L. 105-244, § 308(b), inserted ", D or E" after "part C".

Subsec. (b)(6). Pub. L. 105-244, §§ 301(c)(11), 308(c), substituted "section 1068e" for "section 1069c" and inserted ", except that for purposes of section 1059c of this title, paragraphs (2) and (3) of section 1068e of this title shall not apply" before semicolon.

1992—Subsec. (b)(7)(D) to (F). Pub. L. 102-325 redesignated subpars. (E) and (F) as (D) and (E), respectively, and struck out former subpar. (D) which read as follows: "information explaining the manner in which the proposed project will assist the applicant to prepare for the critical financial problems that all institutions of higher education will face during the subsequent decade as a result of declining enrollment, and other problems;"

1987—Subsec. (b)(6). Pub. L. 100-50 substituted "section 1069c of this title" for "section 1069b of this title".

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

### § 1068a. Waiver authority and reporting requirement

#### (a) Waiver requirements; need-based assistance students

The Secretary may waive the requirements set forth in section 1058(b)(1)(A) of this title in the case of an institution—

(1) which is extensively subsidized by the State in which it is located and charges low or no tuition;

(2) which serves a substantial number of low-income students as a percentage of its total student population;

(3) which is contributing substantially to increasing higher education opportunities for educationally disadvantaged, underrepresented, or minority students, who are low-income individuals;

(4) which is substantially increasing higher educational opportunities for individuals in rural or other isolated areas which are unserved by postsecondary institutions;

(5) located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians;

(6) that is a tribally controlled college or university as defined in section 1801 of title 25; or

(7) wherever located, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of Black Americans, Hispanic Americans, Native Americans, Asian Americans, or Pacific Islanders, including Native Hawaiians.

#### (b) Waiver determinations; expenditures

(1) The Secretary may waive the requirements set forth in section 1058(b)(1)(B) of this title if the Secretary determines, based on persuasive evidence submitted by the institution, that the institution's failure to meet that criterion is due to factors which, when used in the determination of compliance with such criterion, distort such determination, and that the institution's designation as an eligible institution under part A of this subchapter is otherwise consistent with the purposes of such parts.<sup>1</sup>

(2) The Secretary shall submit to the Congress every other year a report concerning the institutions which, although not satisfying the criterion contained in section 1058(b)(1)(B) of this title, have been determined to be eligible institutions under part A which enroll significant numbers of Black American, Hispanic, Native American, Asian American, or Native Hawaiian students under part A, as the case may be. Such report shall—

(A) identify the factors referred to in paragraph (1) which were considered by the Secretary as factors that distorted the determination of compliance with subparagraphs (A) and (B) of section 1058(b)(1) of this title; and

(B) contain a list of each institution determined to be an eligible institution under part

<sup>1</sup> So in original. Probably should be "part."

A including a statement of the reasons for each such determination.

(3) The Secretary may waive the requirement set forth in section 1058(b)(1)(E)<sup>2</sup> of this title in the case of an institution located on or near an Indian reservation or a substantial population of Indians, if the Secretary determines that the waiver will substantially increase higher education opportunities appropriate to the needs of American Indians.

**(c) Waiver authority with respect to institutions located in an area affected by a Gulf hurricane disaster**

**(1) Waiver authority**

Notwithstanding any other provision of law, unless enacted with specific reference to this section, for any affected institution that was receiving assistance under this subchapter at the time of a Gulf hurricane disaster, the Secretary shall, for each of the fiscal years 2009 through 2011 (and may, for each of the fiscal years 2012 and 2013)—

(A) waive—

(i) the eligibility data requirements set forth in section 1068(d) of this title;

(ii) the wait-out period set forth in section 1059(d) of this title;

(iii) the allotment requirements under section 1063 of this title; and

(iv) the use of the funding formula developed pursuant to section 1063b(f)(3) of this title;

(B) waive or modify any statutory or regulatory provision to ensure that affected institutions that were receiving assistance under this subchapter at the time of a Gulf hurricane disaster are not adversely affected by any formula calculation for fiscal year 2009 or for any of the four succeeding fiscal years, as necessary; and

(C) make available to each affected institution an amount that is not less than the amount made available to such institution under this subchapter for fiscal year 2006, except that for any fiscal year for which the funds appropriated for payments under this subchapter are less than the appropriated level for fiscal year 2006, the amount made available to such institutions shall be ratably reduced among the institutions receiving funds under this subchapter.

**(2) Definitions**

In this subsection:

**(A) Affected institution**

The term “affected institution” means an institution of higher education that—

(i) is—

(I) a part A institution (which term shall have the meaning given the term “eligible institution” under section 1058(b) of this title); or

(II) a part B institution, as such term is defined in section 1061(2) of this title, or as identified in section 1063b(e) of this title;

(ii) is located in an area affected by a Gulf hurricane disaster; and

(iii) is able to demonstrate that, as a result of the impact of a Gulf hurricane disaster, the institution—

(I) incurred physical damage;

(II) has pursued collateral source compensation from insurance, the Federal Emergency Management Agency, and the Small Business Administration, as appropriate; and

(III) was not able to fully reopen in existing facilities or to fully reopen to the pre-hurricane enrollment levels during the 30-day period beginning on August 29, 2005.

**(B) Area affected by a Gulf hurricane disaster; Gulf hurricane disaster**

The terms “area affected by a Gulf hurricane disaster” and “Gulf hurricane disaster” have the meanings given such terms in section 209 of the Higher Education Hurricane Relief Act of 2005 (Public Law 109-148, 119 Stat. 2809).

(Pub. L. 89-329, title III, §392, formerly §352, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1304; amended Pub. L. 100-50, §2(a)(14), (15), June 3, 1987, 101 Stat. 336; Pub. L. 102-325, title III, §305(b), July 23, 1992, 106 Stat. 478; renumbered §392 and amended Pub. L. 105-244, title III, §§301(a)(2), 308(d), Oct. 7, 1998, 112 Stat. 1636, 1649; Pub. L. 110-315, title III, §§318, 320(5), Aug. 14, 2008, 122 Stat. 3185, 3188; Pub. L. 111-39, title III, §301(8), July 1, 2009, 123 Stat. 1938.)

REFERENCES IN TEXT

Section 1058(b)(1)(E) of this title, referred to in subsec. (b)(3), was repealed and section 1058(b)(1)(F) was redesignated section 1058(b)(1)(E) by Pub. L. 102-325, title III, §302(a)(1)(B), (C), July 23, 1992, 106 Stat. 472.

Section 209 of the Higher Education Hurricane Relief Act of 2005, referred to in subsec. (c)(2)(B), is section 209 of title IV of div. B of Pub. L. 109-148, Dec. 30, 2005, 119 Stat. 2808, which is not classified to the Code.

CODIFICATION

Section was formerly classified to section 1067 of this title prior to renumbering by Pub. L. 105-244.

AMENDMENTS

2009—Subsec. (a)(6). Pub. L. 111-39 made technical amendment to reference in original act which appears in text as reference to section 1801 of title 25.

2008—Subsec. (b)(2). Pub. L. 110-315, §320(5), substituted “eligible institutions under part A” for “eligible institutions under part A institutions” in introductory provisions. See Codification note above.

Subsec. (c). Pub. L. 110-315, §318, added subsec. (c).

1998—Subsec. (a)(5) to (7). Pub. L. 105-244 struck out “or” at end of par. (5), added par. (6), and redesignated former par. (6) as (7).

1992—Subsec. (a). Pub. L. 102-325 substituted “Secretary may waive” for “Secretary shall waive”.

1987—Subsec. (a)(2). Pub. L. 100-50, §2(a)(14), substituted “low-income” for “low- and middle-income”.

Subsec. (b)(3). Pub. L. 100-50, §2(a)(15), added par. (3).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-39 effective as if enacted on the date of enactment of Pub. L. 110-315 (Aug. 14, 2008), see section 3 of Pub. L. 111-39, set out as a note under section 1001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see sec-

<sup>2</sup> See References in Text note below.

tion 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-50 effective as if enacted as part of the Higher Education Amendments of 1986, Pub. L. 99-498, see section 27 of Pub. L. 100-50, set out as a note under section 1001 of this title.

#### TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103-7 (in which the last item on page 79 identifies a reporting provision which, as subsequently amended, is contained in subsec. (b)(2) of this section), see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

### § 1068b. Application review process

#### (a) Review panel

(1) All applications submitted under this subchapter by institutions of higher education shall be read by a panel of readers composed of individuals selected by the Secretary. The Secretary shall assure that no individual assigned under this section to review any application has any conflict of interest with regard to the application which might impair the impartiality with which the individual conducts the review under this section.

(2) The Secretary shall take care to assure that representatives of historically and predominantly Black colleges, Hispanic institutions, Tribal Colleges and Universities, and institutions with substantial numbers of Hispanics, Native Americans, Asian Americans, and Native American Pacific Islanders (including Native Hawaiians) are included as readers.

(3) All readers selected by the Secretary shall receive thorough instruction from the Secretary regarding the evaluation process for applications submitted under this subchapter and consistent with the provisions of this subchapter, including—

(A) explanations and examples of the types of activities referred to in section 1057(b) of this title that should receive special consideration for grants awarded under part A of this subchapter and of the types of activities referred to in section 1062 of this title that should receive special consideration for grants awarded under part B of this subchapter;

(B) an enumeration of the factors to be used to determine the quality of applications submitted under this subchapter; and

(C) an enumeration of the factors to be used to determine whether a grant should be awarded for a project under this subchapter, the amount of any such grant, and the duration of any such grant.

#### (b) Recommendations of panel

In awarding grants under this subchapter, the Secretary shall take into consideration the recommendations of the panel made under subsection (a) of this section.

#### (c) Notification

Not later than June 30 of each year, the Secretary shall notify each institution of higher education making an application under this subchapter of—

(1) the scores given the applicant by the panel pursuant to this section;

(2) the recommendations of the panel with respect to such application; and

(3) the reasons for the decision of the Secretary in awarding or refusing to award a grant under this subchapter, and any modifications, if any, in the recommendations of the panel made by the Secretary.

#### (d) Exclusion

The provisions of this section shall not apply to applications submitted under part D of this subchapter.

(Pub. L. 89-329, title III, §393, formerly §353, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1305; renumbered §393 and amended Pub. L. 105-244, title III, §§301(a)(2), 308(e), Oct. 7, 1998, 112 Stat. 1636, 1649.)

#### CODIFICATION

Section was formerly classified to section 1068 of this title prior to renumbering by Pub. L. 105-244.

#### AMENDMENTS

1998—Subsec. (a)(2). Pub. L. 105-244, §308(e)(1), substituted “Tribal Colleges and Universities” for “Native American colleges and universities”.

Subsec. (d). Pub. L. 105-244, §308(e)(2), added subsec. (d).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

### § 1068c. Cooperative arrangements

#### (a) General authority

The Secretary may make grants to encourage cooperative arrangements—

(1) with funds available to carry out part A of this subchapter, between institutions eligible for assistance under part A of this subchapter and between such institutions and institutions not receiving assistance under this subchapter; or

(2) with funds available to carry out part B of this subchapter, between institutions eligible for assistance under part B of this subchapter and institutions not receiving assistance under this subchapter;

for the activities described in section 1057(b) of this title or section 1062 of this title, as the case may be, so that the resources of the cooperating institutions might be combined and shared to achieve the purposes of such parts and avoid costly duplicative efforts and to enhance the development of part A and part B eligible institutions.

#### (b) Priority

The Secretary shall give priority to grants for the purposes described under subsection (a) of this section whenever the Secretary determines that the cooperative arrangement is geographi-

cally and economically sound or will benefit the applicant institution.

**(c) Duration**

Grants to institutions having a cooperative arrangement may be made under this section for a period as determined under section 1059 of this title or section 1062 of this title.

(Pub. L. 89-329, title III, §394, formerly §354, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1305; renumbered §394, Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636.)

**CODIFICATION**

Section was formerly classified to section 1069 of this title prior to renumbering by Pub. L. 105-244.

**§ 1068d. Assistance to institutions under other programs**

**(a) Assistance eligibility**

Each institution which the Secretary determines to be an institution eligible under part A of this subchapter or an institution eligible under part B of this subchapter may be eligible for waivers in accordance with subsection (b) of this section.

**(b) Waiver applicability**

(1) Subject to, and in accordance with, regulations promulgated for the purpose of this section, in the case of any application by an institution referred to in subsection (a) of this section for assistance under any programs specified in paragraph (2), the Secretary is authorized, if such application is otherwise approvable, to waive any requirement for a non-Federal share of the cost of the program or project, or, to the extent not inconsistent with other law, to give, or require to be given, priority consideration of the application in relation to applications from other institutions.

(2) The provisions of this section shall apply to any program authorized by part D of this subchapter or subchapter IV of this chapter or part C of subchapter I of chapter 34 of title 42.

**(c) Limitation**

The Secretary shall not waive, under subsection (b) of this section, the non-Federal share requirement for any program for applications which, if approved, would require the expenditure of more than 10 percent of the appropriations for the program for any fiscal year.

(Pub. L. 89-329, title III, §395, formerly §356, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1306; amended Pub. L. 102-325, title III, §305(d), July 23, 1992, 106 Stat. 478; Pub. L. 104-208, div. A, title I, §101(e) [title VII, §709(d)], Sept. 30, 1996, 110 Stat. 3009-233, 3009-314; renumbered §395 and amended Pub. L. 105-244, title III, §§301(a)(2), 308(f), Oct. 7, 1998, 112 Stat. 1636, 1649.)

**CODIFICATION**

Section was formerly classified to section 1069b of this title prior to renumbering by Pub. L. 105-244.

**AMENDMENTS**

1998—Subsec. (b)(2). Pub. L. 105-244, §308(f), substituted “part D of this subchapter or subchapter IV of this chapter” for “subchapter IV, VII, or VIII of this chapter”.

1996—Subsec. (b)(2). Pub. L. 104-208 struck out “II,” after “authorized by subchapter”.

1992—Subsec. (a). Pub. L. 102-325 substituted “may be eligible” for “shall be eligible”.

**EFFECTIVE DATE OF 1998 AMENDMENT**

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

**EFFECTIVE DATE OF 1992 AMENDMENT**

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

**§ 1068e. Limitations**

The funds appropriated under section 1068h of this title may not be used—

(1) for a school or department of divinity or any religious worship or sectarian activity;

(2) for an activity that is inconsistent with a State plan for desegregation of higher education applicable to such institution;

(3) for an activity that is inconsistent with a State plan of higher education applicable to such institution; or

(4) for purposes other than the purposes set forth in the approved application under which the funds were made available to the institution.

(Pub. L. 89-329, title III, §396, formerly §357, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1307; renumbered §396, Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636; amended Pub. L. 110-315, title III, §320(6), Aug. 14, 2008, 122 Stat. 3188.)

**AMENDMENTS**

2008—Pub. L. 110-315 substituted “1068h of this title” for “1069f of this title” in introductory provisions.

**§ 1068f. Penalties**

Whoever, being an officer, director, agent, or employee of, or connected in any capacity with, any recipient of Federal financial assistance or grant pursuant to this subchapter embezzles, willfully misapplies, steals, or obtains by fraud any of the funds which are the subject of such grant or assistance, shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both.

(Pub. L. 89-329, title III, §397, formerly §358, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1307; renumbered §397, Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636.)

**CODIFICATION**

Section was formerly classified to section 1069d of this title prior to renumbering by Pub. L. 105-244.

**§ 1068g. Continuation awards**

The Secretary shall make continuation awards under this subchapter for the second and succeeding years of a grant only after determining that the recipient is making satisfactory progress in carrying out the grant.

(Pub. L. 89-329, title III, §398, as added Pub. L. 105-244, title III, §308(g), Oct. 7, 1998, 112 Stat. 1649.)



## EFFECTIVE DATE

Section effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as an Effective Date of 1998 Amendment note under section 1001 of this title.

**§ 1068h. Authorization of appropriations****(a) Authorizations****(1) Part A**

(A) There are authorized to be appropriated to carry out part A (other than sections 1059c through 1059g of this title), \$135,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(B) There are authorized to be appropriated to carry out section 1059c of this title, \$30,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(C) There are authorized to be appropriated to carry out section 1059d of this title, \$15,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(D) There are authorized to be appropriated to carry out section 1059e of this title, \$75,000,000 for fiscal year 2009 and each of the five succeeding fiscal years.

(E) There are authorized to be appropriated to carry out section 1059f of this title, \$25,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(F) There are authorized to be appropriated to carry out section 1059g of this title, \$30,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

**(2) Part B**

(A) There are authorized to be appropriated to carry out part B (other than section 1063b of this title), \$375,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(B) There are authorized to be appropriated to carry out section 1063b of this title, \$125,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

**(3) Part C**

There are authorized to be appropriated to carry out part C, \$10,000,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

**(4) Part D**

(A) There are authorized to be appropriated to carry out part D (other than section 1066d(9) of this title, but including section 1066f of this title), \$185,000 for fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(B) There are authorized to be appropriated to carry out section 1066d(9) of this title such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

**(5) Part E**

(A) There are authorized to be appropriated to carry out subpart 1 of part E, \$12,000,000 for

fiscal year 2009, and such sums as may be necessary for each of the five succeeding fiscal years.

(B) There are authorized to be appropriated to carry out subpart 2 of part E, such sums as may be necessary for fiscal year 2009 and each of the five succeeding fiscal years.

**(b) Use of multiple year awards**

In the event of a multiple year award to any institution under this subchapter, the Secretary shall make funds available for such award from funds appropriated for this subchapter for the fiscal year in which such funds are to be used by the recipient.

(Pub. L. 89-329, title III, §399, formerly §360, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1307; amended Pub. L. 102-325, title III, §305(e)-(g), July 23, 1992, 106 Stat. 479; renumbered §399, and amended Pub. L. 105-244, title III, §§301(a)(2), 308(h), Oct. 7, 1998, 112 Stat. 1636, 1649; Pub. L. 110-315, title III, §319, Aug. 14, 2008, 122 Stat. 3186.)

## CODIFICATION

Section was formerly classified to section 1069f of this title prior to renumbering by Pub. L. 105-244.

## PRIOR PROVISIONS

A prior section 1069, Pub. L. 89-329, title III, §354, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1305, which related to cooperative arrangements, was renumbered section 394 of Pub. L. 89-329 by Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068c of this title.

Another prior section 1069, Pub. L. 89-329, title III, §344, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1399, provided for a program of grants to encourage cooperative arrangements between institutions, prior to the general amendment of this subchapter by Pub. L. 99-498.

Another prior section 1069, Pub. L. 89-329, title IV, §409, Nov. 8, 1965, 79 Stat. 1236, related to definition of academic year, prior to the general amendment of part A of subchapter IV of this chapter by Pub. L. 92-318, title I, §131(b)(1), June 23, 1972, 86 Stat. 247.

A prior section 1069a, Pub. L. 89-329, title III, §355, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1306; amended Pub. L. 100-50, §2(a)(16), (17), June 3, 1987, 101 Stat. 336, related to special payments rules, prior to repeal by Pub. L. 102-325, §2, title III, §305(c), July 23, 1992, 106 Stat. 458, 478, effective Oct. 1, 1992.

Another prior section 1069a, Pub. L. 89-329, title III, §345, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1399, related to assistance to institutions under other programs, prior to the general amendment of this subchapter by Pub. L. 99-498.

A prior section 1069b, Pub. L. 89-329, title III, §356, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1306, and amended, which related to assistance to institutions under other programs, was renumbered section 395 of Pub. L. 89-329 by Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068d of this title.

Another prior section 1069b, Pub. L. 89-329, title III, §346, as added Pub. L. 96-374, title III, §301, Oct. 3, 1980, 94 Stat. 1400, limited activities for which funds appropriated to carry out this subchapter could be expended, prior to the general amendment of this subchapter by Pub. L. 99-498.

A prior section 1069c, Pub. L. 89-329, title III, §357, as added Pub. L. 99-498, title III, §301(a), Oct. 17, 1986, 100 Stat. 1307, which related to limitations on use of funds, was renumbered section 396 of Pub. L. 89-329 by Pub. L. 105-244, title III, §301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068e of this title.

Another prior section 1069c, Pub. L. 89-329, title III, § 347, as added Pub. L. 96-374, title III, § 301, Oct. 3, 1980, 94 Stat. 1400, and Pub. L. 98-95, § 3, Sept. 26, 1983, 97 Stat. 711; Pub. L. 98-312, § 1, June 12, 1984, 98 Stat. 233, authorized appropriations to carry out parts A to C of this subchapter, prior to the general amendment of this subchapter by Pub. L. 99-498.

A prior section 1069d, Pub. L. 89-329, title III, § 358, as added Pub. L. 99-498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1307, which related to penalties, was renumbered section 397 of Pub. L. 89-329 by Pub. L. 105-244, title III, § 301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to section 1068f of this title.

A prior section 1069e, Pub. L. 89-329, title III, § 359, as added Pub. L. 99-498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1307, required application for challenge grant, prior to repeal by Pub. L. 102-325, § 2, title III, § 305(c), July 23, 1992, 106 Stat. 458, 478, effective Oct. 1, 1992.

A prior section 1069f, Pub. L. 89-329, title III, § 360, as added Pub. L. 99-498, title III, § 301(a), Oct. 17, 1986, 100 Stat. 1307, and amended, which authorized appropriations, was renumbered section 399 of Pub. L. 89-329 by Pub. L. 105-244, title III, § 301(a)(2), Oct. 7, 1998, 112 Stat. 1636, and transferred to this section.

#### AMENDMENTS

2008—Subsec. (a). Pub. L. 110-315 amended subsec. (a) generally. Prior to amendment, subsec. (a) related to authorizations for parts A to E for fiscal year 1999 and each of the 4 succeeding fiscal years.

1998—Subsec. (a)(1)(A). Pub. L. 105-244, § 308(h)(1)(A), substituted “1999” for “1993”.

Subsec. (a)(1)(B). Pub. L. 105-244, § 308(h)(1)(B), redesignated cl. (i) as entire subpar., substituted “\$10,000,000 for fiscal year 1999” for “\$45,000,000 for fiscal year 1993”, and struck out cl. (ii) which read as follows: “No funds are authorized to be appropriated pursuant to clause (i) for any fiscal year unless the amount appropriated pursuant to paragraph (1)(A) for such fiscal year equals or exceeds \$80,000,000.”

Subsec. (a)(1)(C). Pub. L. 105-244, § 308(h)(1)(C), added subpar. (C).

Subsec. (a)(2)(A). Pub. L. 105-244, § 308(h)(2)(A), substituted “1999” for “1993”.

Subsec. (a)(2)(B). Pub. L. 105-244, § 308(h)(2)(B), substituted “\$35,000,000 for fiscal year 1999” for “\$20,000,000 for fiscal year 1993”.

Subsec. (a)(3). Pub. L. 105-244, § 308(h)(3), substituted “\$10,000,000 for fiscal year 1999” for “\$50,000,000 for fiscal year 1993”.

Subsec. (a)(4), (5). Pub. L. 105-244, § 308(h)(4), added pars. (4) and (5).

Subsec. (c). Pub. L. 105-244, § 308(h)(5), struck out heading and text of subsec. (c). Text read as follows: “If the amount appropriated under subsection (a)(1) of this section for part A of this subchapter for any fiscal year beginning after September 30, 1986, equals or exceeds the amount appropriated for such part for fiscal year 1986, the Secretary shall, for such fiscal year—

“(1) allocate 25 percent of the excess (above the amount appropriated for part A of this subchapter for fiscal year 1986) among eligible institutions at which at least 60 percent of the students are African Americans, Hispanic Americans, Native Americans, Asian Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof; and

“(2) allocate 75 percent of such excess among other eligible institutions.”

Subsec. (d). Pub. L. 105-244, § 308(h)(5), struck out heading and text of subsec. (d). Text read as follows: “In any fiscal year in which the sums appropriated for part A of this subchapter are insufficient to make the reservations required by subsection (c) of this section, the Secretary shall ratably reduce the amount of the reservation.”

Subsec. (e). Pub. L. 105-244, § 308(h)(5), struck out heading and text of subsec. (e). Text read as follows: “In any fiscal year beginning after September 30, 1992, the Secretary shall award at least 25 percent of the amount appropriated pursuant to the authority of

paragraph (3) of subsection (a) of this section in each fiscal year to historically black colleges and universities that meet the requirements of part C of this subchapter, unless there are an insufficient number of quality applications or an insufficient number of applications due to the provisions in subsection (b)(2)(C) or subsection (b)(4)(B) of section 1065 of this title.”

1992—Subsec. (a). Pub. L. 102-325, § 305(e), amended subsec. (a) generally, substituting present provisions for provisions authorizing appropriations for fiscal year 1987 and the four succeeding fiscal years.

Subsec. (c). Pub. L. 102-325, § 305(f), substituted “1986, the Secretary shall, for such fiscal year—” for “1986—” in introductory provisions, added pars. (1) and (2), and struck out former pars. (1) and (2) which read as follows:

“(1) the Secretary shall, for such fiscal year, make available for use for the purposes of part A of this subchapter to institutions that are junior or community colleges not less than \$51,400,000; and

“(2) the Secretary shall, for such fiscal year—  
“(A) allocate 25 percent of the excess (above the amount appropriated for part A of this subchapter for fiscal year 1986) among eligible institutions with the highest percentages of students who are Black Americans, Hispanic Americans, Native Americans, Asian Americans, Native Hawaiians, or Pacific Islanders, or any combination thereof; and  
“(B) allocate 75 percent of such excess among other eligible institutions.”

Subsec. (e). Pub. L. 102-325, § 305(g), added subsec. (e).

#### EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105-244, see section 3 of Pub. L. 105-244, set out as a note under section 1001 of this title.

#### EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-325 effective Oct. 1, 1992, see section 2 of Pub. L. 102-325, set out as a note under section 1001 of this title.

### SUBCHAPTER IV—STUDENT ASSISTANCE

#### PART A—GRANTS TO STUDENTS IN ATTENDANCE AT INSTITUTIONS OF HIGHER EDUCATION

##### CODIFICATION

Part A of title IV of the Higher Education Act of 1965, comprising this part, was originally enacted by Pub. L. 89-329, title IV, Nov. 8, 1965, 79 Stat. 1232, and amended by Pub. L. 92-318, June 23, 1972, 86 Stat. 235; Pub. L. 93-380, Aug. 21, 1974, 88 Stat. 484; Pub. L. 94-328, June 30, 1976, 90 Stat. 727; Pub. L. 94-482, Oct. 12, 1976, 90 Stat. 2081; Pub. L. 95-43, June 15, 1977, 91 Stat. 213; Pub. L. 95-336, Aug. 4, 1978, 92 Stat. 451; Pub. L. 95-566, Nov. 1, 1978, 92 Stat. 2402; Pub. L. 96-49, Aug. 13, 1979, 93 Stat. 351; Pub. L. 96-374, Oct. 3, 1980, 94 Stat. 1367; Pub. L. 97-300, Oct. 13, 1982, 96 Stat. 1322; Pub. L. 97-301, Oct. 13, 1982, 96 Stat. 1400; Pub. L. 98-558, Oct. 30, 1984, 98 Stat. 2878; Pub. L. 99-145, Nov. 8, 1985, 99 Stat. 583. Such part is shown herein, however, as having been added by Pub. L. 99-498, title IV, § 401(a), Oct. 17, 1986, 100 Stat. 1308, without reference to such intervening amendments because of the extensive revision of part A by Pub. L. 99-498.

### § 1070. Statement of purpose; program authorization

#### (a) Purpose

It is the purpose of this part, to assist in making available the benefits of postsecondary education to eligible students (defined in accordance with section 1091 of this title) in institutions of higher education by—

(1) providing Federal Pell Grants to all eligible students;